SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 288

IN THE MATTER OF THE DETERMINATION
OF GOOD MORAL CHARACTER OF
MICHAEL ZIPKIN, PETITIONER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

PETITION FOR CERTIORARI FILED AUGUST 5, 1961
CERTIORARI GRANTED OCTOBER 9, 1961

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

BEFORE THE
STATE BOARD OF LAW EXAMINERS OF MISSOURI

Hearing of
The State Board of Law Examiners
Columbia, Missouri
October 21, 1960

A Partial Transcript of the Hearing Hereinabove Set Forth, Containing the Entire Testimony of Carl Sapp, L. D. Baurichter, Dean Joe Covington, Professor Edmond Anderson and Ada Margaret Baurichter

Let the record show that this is a hearing of the State Board of Law Examiners held on October 21, 1960 at the Law School Building at the Law School of the University of Missouri at Columbia, Missouri, at 1:00 p.m. in connection with the application, No. 17333, of Mr. Michael Zipkin to take the Missouri Bar Examination. This Hearing is held under Supreme Court Rule "B" and has as its general purpose a determination as to whether or not Mr. Michael Zipkin meets the qualifications under Rule 8 of good moral character in order to be entitled to take the Missouri Bar Examination.

APPEARANCES

Mr. Thomas L. Croft, Attorney at Law, 412 N. 7th Street, St. Louis, Missouri.

Mr. Walter McQuie, Attorney at Law, Montgomery City, Missouri.

Mr. David Donnelly, Attorney at Law, 112 N. Madison, Lebanon, Missouri.

Mr. John Oliver, Attorney at Law, 1000 Federal Reserve Bank Building, Kansas City, Missouri.

Mr. Louis Wagner, Attorney at Law, 1014 Argyle Building, Kansas City, Missouri, Appeared for Michael Zipkin.

Mr. Robert E. Seiler, Attorney at Law, First National Bank Building, Joplin, Missouri.

C. R. Beebe of Miles & Behrens, Shorthand Reporters, 1122 Scarritt Building, Kansas City, Missouri.

[fol. 2]

COLLOQUY BETWEEN BOARD AND COUNSEL

Mr. Croft: I will ask the reporter to mark Board Exhibits, five letters by and between Mr. Seiler, Secretary of the Board, and Mr. Zipkin. Mark this letter of Mr. Seiler to Mr. Zipkin of September 1, 1960, as Board Exhibit One, the letter from Mr. Zipkin to Mr. Seiler of September 14, 1960, as Exhibit Two, the letter of Mr. Seiler to Mr. Zipkin of October 3, 1960, as Exhibit Three, the letter from Mr. Zipkin to Mr. Seiler of October 7, 1960, as Exhibit Four, and the letter from Mr. Seiler to Mr. Zipkin of October 11, 1960, as Board Exhibit Five.

(Thereupon, the reporter marked for identification Board Exhibits, One through Five.)

Mr. Wagner: We have no objections.

Mr. Croft: Just briefly, in regard to the procedure, Mr. McQuie will interrogate witnesses on behalf of the Board with any member of the Board to be privileged to make any other interrogation. After Mr. McQuie concludes then you will have the privilege of cross-examination.

Mr. Wagner: Would it be out of order to inquire who the real party is who instigated these proceedings.

Mr. Croft: These proceedings were instigated on its own motion under Rule 8 and the Board Exhibits, One through Five, stated the information that came to the [fol. 3] Board that prompted the Board to call for the hearing.

Mr. Wagner: Well, that is what I am getting at. Would it be out of order to inquire who was responsible for reporting the information to the Board.

Mr. Croft: I think that will not be a matter of real advantage in this hearing. Let the record show at this time, Board member Mr. David Donnelly is also present. I think the record should also show that Board member Mr. Robert Seiler had planned to be present and missed his airplane connections in Kansas City. He will be present before the hearing is concluded. Are we prepared at this time to proceed?

Mr. Wagner: I intended to—maybe its a little premature—probably to request a continuance after the Board has

concluded with their case since the letter under date of October 3, 1960, or the Board Exhibit does not set out with particularity the charges lodged against Mr. Zipkin. It might not be necessary after the conclusion of the hearing, but I do want to preserve that right.

Mr. Croft: You will have the right to make such a request at the proper time. You will not be foreclosed. Dave, would you ask Mr. Sapp to come in.

[fol. 4] Carl Sapp, of lawful age, being produced, sworn and examined by the Board of Law Examiners, deposeth and saith:

Mr. Wagner: May I inquire about the procedure here? I assume we are going to be bound by technical rules here. How is that handled as far as objections are concerned?

Mr. Croft: You may make any objections that you wish. It is the desire of the Board to dispense with obvious technicalities, but in general, we intend to be guided by admissible evidence. Does that answer your question?

Mr. Wagner: Yes.

Mr. Croft: Mr. McQuie.

Examination by Mr. McQuie:

Q. Will you state your name and address?

A. Carl Sapp. I am an attorney and I practice at 502 Guitar Building at Columbia, Missouri. I live at 111 West Rollins Road in Columbia, Missouri.

Q. How long have you been a practicing attorney in Boone County.

A. Approximately 12 years.

Q. Having in mind the general rule as to privileged communications, will you state whether at one time you have represented a Dr. Freeman of Columbia?

[fol. 5] A. I represent him at this time.

Q. Didn't you represent him in a hearing before the State Board of Healing Arts?

A. I did.

Q. And would you state the date of that hearing?

A. June 25, 1960.

Q. Now, when did Dr. Freeman first become a client of yours?

Mr. Wagner: We are going to object to this line of testimony as immaterial unless it can be connected with Mr. Zipkin. I don't know if that has anything to do with the issues before the Board.

Mr. Croft: Your objection will be overruled at this time.

A. A week or so prior to that time. I don't know whether it was two weeks or three or four weeks. I couldn't tell you exactly.

Q. Are you acquainted with Michael Zipkin?

A. I am.

Q. How long have you known him?

A. I would say six or seven months. I am not sure about that.

Q. Will you state when you first became acquainted with him with reference to the time Dr. Freeman became a client of yours?

A. Now, I think that it was about the same time or maybe a little before. I am not sure.

[fol. 6] Q. What is the nature of your acquaintanceship with Michael Zipkin? Is it purely social or is it business and social?

A. I just know Michael Zipkin. We haven't been on any social affairs together and we haven't had any social communications together. I know Michael Zipkin as a person. He has come to my office and I have talked to him a couple of times socially, not on business. It is just a matter of knowing him.

Q. Has he ever been employed by you?

A. He has never been employed by me.

Q. You said "never been"?

A. He has never been employed by me.

Q. Have you ever worked with him in any manner?

A. No.

Q. Do you know whether Mr. Zipkin has ever engaged in interviewing witnesses or gathering evidence with regard to Dr. Freeman's hearing about which you previously testified?

A. Not to my knowledge.

Q. Have you ever directed him to interview witnesses or gather evidence in regard to that hearing?

A. I can't recall that I ever did.

Q. Now, Mr. Sapp, are you acquainted with the general reputation of Michael Zipkin in and about Columbia?

[fol. 7] A. I am acquainted with Mike only to the extent of the two, three, or four times that I have talked to him. I am acquainted with him that way. I am not acquainted with his reputation. I will say this to the Board, if I may, that his conversation and conduct at the times that I have seen and talked to him have been above reproach and he has conducted himself as a gentleman in my presence, I don't know his reputation.

Q. Do you know anything about his general fitness to be a member of the Bar of the State of Missouri?

A. No sir, I do not.

Q. Are you acquainted with the questionnaire that law students now sign prior to enrolling or shortly after enrolling and prior to taking the Bar Examination?

A. I am not acquainted with the questionnaire. I don't know. I don't know that I have seen one, I may have even signed one.

Q. When you say "seen one", in what connection?

A. I may have seen one. There is an affidavit that goes on on most of these applications that a lawyer is required to sign before his application is accepted and examined.

Q. Is this known as a character reference?

A. That is right, a character reference.

Q. Would you sign such an affidavit for Michael Zipkin?

A. Well, I would sign one for him. I couldn't say that I [fol. 8] knew his general reputation in the community, but I would sign an affidavit that from my experiences he is—that is talking to him—he has conducted himself as a gentleman. I don't know how that affidavit reads.

Mr. McQuie: That is all the questions I have, Mr. President.

Mr. Croft: Mr. Sapp, may I clarify this, that at no time did you ever request Mr. Zipkin to obtain evidence or talk with witnesses in connection with this Freeman hearing?

Mr. Sapp: I have never requested this of Mike Zipkin. Now, I will say this, if I may go just a little bit farther, I also represent a woman named Ada Margaret Baurichter

who is a client of mine and who is filing a suit for divorce from her husband. Ada Margaret came to the office one time and stated that she was apprehensive about going to a farm which she owns and which she owns with her husband jointly. I had asked her to go to the farm for the purpose of taking an inventory of things on the farm because she couldn't remember them, and we were at that time getting ready to file a motion for attorney's fees, and a number of other things. She was apprehensive about going. I said to her, "If you are apprehensive about going, I would like you to take a witness with you. That way [fol. 9] nobody will harm you because of the witness. Nobody is going to assault you or do anything to you if you have a witness and at the same time you will have someone to testify as to your conduct." I found out later that Mike Zipkin went along. I didn't know though that he was going at that time.

Mr. Croft: Are there any other questions from the members of the committee?

By Mr. Donnelly:

Q. Mr. Sapp, can you tell us whether or not this divorce proceeding has any relationship to the Freeman hearing, in other words, this general matter?

A. The complaint that was made against Dr. Freeman was made by a gentleman named Van Laningham. This was testified to yesterday in his deposition. Mr. Van Laningham is going to be the Senator of this district and is the brother of Ada Margaret Baurichter. He made claims that Dr. Freeman had misused Ada Margaret Baurichter's moneys. This is an issue we deny, and Ada Margaret Baurichter denies it. As to the connection between Ada Margaret Baurichter and Dr. Freeman, there is a connection. Is that the answer you wanted?

Q. Yes.

By Mr. Oliver:

Q. May I ask you this question? Is it a fair statement [fol. 10] to say that as these two pieces of litigation are connected in the manner in which you have stated, there

is considerable community feeling in general? By reason of these two pieces of litigation and the associated circumstances here in Columbia and Boone County?

A. There is a considerable community feeling. At first, in June of 1960 the community feeling was—there were rumors all over the community about Dr. Freeman and Ada Margaret Baurichter. There were these rumors all over the community and people, being as they are, most of these rumors were believed whether there was evidence or not. Since that time, I have noticed that this community feeling seems to be back-firing. The feeling now seems, to me, to be going the other way. I may be wrong about it, but there is not the community feeling any more that there was in June 1960.

Mr. Oliver: I have no further questions.
Mr. Croft: Mr. Wagner.

By Mr. Wagner:

Q. Mr. Sapp, you think because of the community feeling that Mr. Zipkin is now involved at this hearing on the question of good moral character?

A. Mr. Zipkin never played a part in the hearing. I don't recall that his name was mentioned. It may have been in the transcript.

[fol. 11] Q. I mean at the hearing—because of the community feeling toward Dr. Freeman and Mr. Van Laningham's sister—that might have resulted in this hearing and the charges lodged against Mr. Zipkin?

A. If you are asking how I feel, I think that very definitely that issue is tied in. There is no question about it in my mind.

Mr. Wagner: I have no further questions.
Mr. Oliver: No further questions.
Mr. Croft: Thank you very much, Mr. Sapp.
The Witness: May I be excused?
Mr. Croft: Yes, you may be excused.

(Witness excused.)

[fol. 12] LOREN D. BAURICHTER, of lawful age, being produced, sworn and examined by the Board of Law Examiners, deposeth and saith:

By Mr. McQuie:

Q. Will you state your name and address please?

A. Loren D. Baurichter, Route three, Columbia, Missouri.

Q. How do you spell that?

A. L-o-r-e-n B-a-u-r-i-c-h-t-e-r.

Q. Mr. Baurichter, are you acquainted with Michael Zipkin sitting at the table?

A. Yes I am.

Q. How long have you known him, sir?

A. Oh, I would have to give you an approximate time. It is probably a year, more or less. I couldn't give you a definite date.

Q. What are the dates of your acquaintanceship with Michael Zipkin?

A. Well, Mike and I have always been, it has been on a friendly basis. I met him socially and I just—that was just the extent of it. The social acquaintance was all.

Q. Are you at the present time estranged from your wife?

A. Yes.

Q. Are you divorced?

A. No.

Q. Is there a litigation pending between you and your wife for a divorce?

A. Yes.

Q. Have you ever had occasion to see Michael Zipkin [fol. 13] with reference to the litigation pending between you and your wife for a divorce?

A. You mean, have I employed him?

Q. No, have you ever seen him at any time in connection with the litigation pending?

A. Well, I have never talked to him about a divorce if that is what you mean, concerning a divorce.

Q. Has he ever come to your home in company with your wife?

A. Yes

Q. And has he done so in connection with a purported inventory of your possessions and belongings?

A. He was with my wife when she came to take this inventory. She had the pencil and paper and as to what he did there, as far as counting or anything, I don't know, but he was with her.

Q. Now when was this occasion about which you have just testified?

A. If you ask me for dates it has been probably a couple of months ago, maybe a little longer, I don't know exactly.

Q. When you first saw him on that occasion, where was he with reference to your house?

A. When I first saw them, they were coming from the west side of the house through the garden and then they went on up to a small tool shed that we had there, and that is the place where we first conversed.

[fol. 14] Q. And what was the substance of that conversation, Mr. Baurichter?

A. Well, of course, I didn't exactly know what was going on, and I just asked what was going on, are you taking an inventory. I don't know whether Mike said it or my wife said it, but one of them said, "Yes, Mr. Sapp told us to." And, of course, it was hard for me to understand. I merely made the statement that I felt if an inventory needed to be taken that certainly my lawyer should know about it, and it should be done mutually.

Q. And what did Mr. Zipkin say, if anything?

A. Well, at the time, my lawyer was at the Democratic National Convention in California, and Mr. Zipkin said, "Oh, L. D., your lawyer is in California, why don't you call him?"

Q. Did Michael Zipkin say anything to you about he, Zipkin, being an attorney or lawyer?

A. The conversation then went from that to—Mr. Zipkin asked about some feeder cattle which we had purchased and were in my possession, and I said something to the effect, just don't worry about them. Then the young man that works for me made a statement to Mr. Zipkin, which I don't recall the exact words, but he can tell you himself. Then Mr. Zipkin told this young man that, "I think I know a little more about it than you do. I am a lawyer."

[fol. 15] Q. Now, who is the young man that you have mentioned that works for you and to whom Zipkin made this statement?

A. He is James Grant, who is here today.

Q. Was anything further said by Mr. Zipkin in regards to he, Zipkin, being a lawyer?

A. Not that I heard.

Q. Did he amplify the statement to which you have testified or expand on the statement in any way?

A. Not that I heard. I became slightly irritated and turned and went towards the house. I felt maybe I should not involve myself too much more.

Q. Do you recall on any other occasions whether Mr. Zipkin stated to you that he was an attorney or that he represented your wife?

A. No.

Q. Are you acquainted with Michael Zipkin's reputation among his acquaintances or associates as to his reputation and character?

A. I have nothing against Michael Zipkin's character and I have, I have always had good relationships with his friends.

Q. I am asking you whether you are acquainted with his reputation and character?

A. Well, now I wouldn't, I couldn't—I just knew him as a social acquaintance.

Mr. McQuie: I believe that is all the questions I have.

[fol. 16] By Mr. Oliver:

Q. Have you known Mr. Zipkin before the inventory incident?

A. Yes, I met him socially.

Q. Did you know that he was a law student at that time?

A. At what time?

Q. At the time that you knew him socially?

A. Yes, I knew that he had been a student, but I didn't know his exact status at all when he was at the farm that day.

Q. I see, and did I understand you correctly, that you did not hear what he said to Mr. Grant. That Mr. Grant told

you what Mr. Zipkin had said to him, or did you hear it? I didn't get your answer to that, sir.

A. What I have said is what I heard. As I said, I turned and went to the house and, of course, what he said to Mr. Grant, you will have to ask Mr. Grant about that.

Q. I see, but you did not hear him and I want it to be clear, I am not trying to put words in your mouth. I didn't hear as to whether you heard Mr. Zipkin say to Mr. Grant, "I am a lawyer" or words to that effect?

A. Oh, yes, I heard that.

Q. You did hear that?

A. Yes.

Mr. Oliver: No further questions.

By Mr. Croft:

Q. This incident took place at your home, is that it?
[fol. 17] A. Yes.

Q. And where is that?

A. It is about seven miles southwest of Columbia.

Q. And at the time this took place you and your wife were separated?

A. Yes.

Q. Did Mr. Zipkin on this occasion tell you what he was doing there at your home?

A. Not that I can recall. Of course, I became confused because of the litigation that had been going on between Mr. Sapp and Mr. Welliver, my attorney. Anything that had—anything, certainly, prior to that time had come through my attorney. I was just a little confused. I didn't know. As I said, if an inventory needed to be taken I felt it should be done mutually. Certainly my attorney should have known about it.

Q. Was your wife present at the time that you say Mr. Zipkin stated that he was a lawyer?

A. Yes.

Q. So there were present, you, your employee, Mr. Grant and your wife?

A. Yes.

Q. No one else?

A. No one else.

By Mr. Donnelly:

Q. To what extent did you know Mr. Zipkin prior to the inventory meeting? You said you knew him socially. On how many occasions did you meet him?

[fol. 18] A. On several, I wouldn't hazard a guess.

Q. Was he a friend of yours and a friend of your wife's as well?

A. Yes, we considered him a mutual friend. At least I did.

Q. Did it seem unusual to you, or natural to you, that he would come with your wife for the purpose of taking this inventory?

A. I would say that it was a bit unusual, at least I felt it was a bit unusual because, as I said, we had been working through our own attorneys.

Q. Did you consider him a friend of yours prior to that time?

A. Yes, I had considered Mike a fairly good friend. He never done anything to me, he did come out with my wife when she moved out.

Q. I didn't understand.

A. I said, "he did come out with my wife when she moved." And then he started to go into my home and help move some of the furniture out. I wouldn't let him go into the house. I told my wife that if she needed any help with moving the furniture, I would certainly do it. So the young man that helps me, helped with the furniture that she wanted. We carried it out to the trailer.

By Mr. Croft:

Q. This last mentioned occurrence about moving furniture out, did this occur before this inventory incident?

[fol. 19] A. Yes.

By Mr. Oliver:

Q. Did you think that Mr. Zipkin, at the furniture moving incident, did you think that Mr. Zipkin was acting in any capacity other than a friend of your wife?

A. I really didn't think too hard against Mr. Zipkin, I

was somewhat irritated with my wife, due to the fact that I had told her I would help her if she needed it.

Q. The point I am getting at is, you didn't think that he was acting as your wife's lawyer at the time that they moved the furniture or tried to move the furniture?

A. No, because Mr. Sapp had been acting as her lawyer. He and Mr. Welliver on any business that needed to be transacted had been done between those lawyers. I wasn't at home the day that she moved the remainder of the furniture, but the young man that works for me said that Mr. Zipkin helped then. But you will have to talk to him about that, I wasn't at home.

Q. I take it your testimony is, that at the time you helped move the furniture, you did not think he was acting as a lawyer?

A. I knew, as I have stated, I knew that he had been a student, but some time had elapsed there, at the time of his stating he was a lawyer, I didn't know his exact status at all.

Q. I am asking you about the furniture moving time. [fol. 20] Was there any representation, and did you have any ideas that he was acting as a lawyer as distinguished from a friend of your wife's?

A. I really didn't give it too much thought. Anything that had been done, as I say, had been done through Mr. Sapp and Mr. Welliver.

By Mr. Wagner:

Q. Mr. Bauriehter, Mr. Zipkin was a dinner guest at your home on several occasions, was he not?

A. I don't recall how many times. I do remember he was there for breakfast, ham breakfast, at one time.

Q. How did he conduct himself at the time he came out to your office?

A. He acted as a gentleman I would say.

Q. Now, do you have any prejudice against Mr. Zipkin because of your relations with Dr. Freeman.

A. No, I have not. I have no bitter feelings against Mr. Zipkin.

Q. Did you have any bitter feelings against Dr. Freeman?

A. I can't say that I have any bitter feelings against Dr. Freeman, because his case is a matter for the courts to decide.

Q. Well, I understand that, but you have no bitter feelings, or prejudice against Dr. Freeman?

A. You mean at the present time?

Q. Yes.

[fol. 21] A. I don't believe that I could say that I had any hard bitter feelings against Dr. Freeman. What I mean by that is, well, all I know, a lot that I know is what you see in the newspapers and it is not conclusive.

Q. I am not concerned about his hearing before the Board.

A. I will have to say, I don't have any bitter feelings against Dr. Freeman.

Q. Your wife was at one time a patient of his?

A. Yes.

Q. And don't you blame Dr. Freeman because of this divorce action your wife has brought against you?

A. Would you repeat that please?

Q. Don't you blame Dr. Freeman for the divorce action brought against you by your wife?

A. Well, I feel that it was a matter of my wife and that she certainly filed and I suppose she knew what she was doing.

Q. You have never made such an accusation against Dr. Freeman as being responsible for the divorce action being filed against you?

A. Not that I can recall.

Q. You knew that Mr. Zipkin was a law student at the time he came out to your house, didn't you?

A. Which time are you speaking of, sir?

Q. Well, how much time separated the two occasions that he came out to your house?

A. I don't know.

[fol. 22] Q. Well, on the first occasion when the furniture was moved you knew he was a student, didn't you?

A. I didn't know for sure, I knew he had been a student.

Q. You knew he was still attending the university, did you not?

A. I didn't know when he was to graduate, no.

Q. He had not, as yet, graduated?

A. I knew he had been a student.

Q. What time of year was it that he came out to your house the first time?

A. What do you mean, the first time?

Q. The first time when he moved the furniture.

A. Oh, that was in the early part of May.

Q. And when did they come out the second time?

A. You mean to remove the remainder of the furniture?

Q. When he came out to take the inventory.

A. I don't recall the exact date.

Q. That was before he graduated in June, was it not?

A. I don't know when it was exactly.

Q. Was your wife present when any representation was made as to him being a lawyer?

A. Yes.

Q. And your wife heard the conversation?

A. I suppose she did.

Q. No question about that! Have you ever discussed this matter of your testimony with anyone else other than [fol. 23] the members of this Board, if you have discussed it with them?

A. I have never discussed this with anyone, of course, the boy that works for me, why we discussed what he heard that day.

Q. Who did you discuss that with?

A. I discussed that with James Grant.

Q. With anyone else?

A. No.

Q. You have never made any written statement to anybody regarding the conversation that you had with Mr. Zipkin on the day in question?

A. You mean an individual?

Q. I mean an individual.

A. I made statements to another Board.

Q. What Board?

A. Oh, it was Mr. Phil Grimes and Mr. Robert Smith.

Q. How did they contact you?

A. Mr. Grimes called me and asked if I would come up there.

Q. Well, didn't he tell you that someone had given him some information in regards to these related conversations?

A. I don't know who told him. Of course, I did discuss this with my lawyer.

Q. Who was that?

A. Mr. Welliver. The course of discussion amounted to what I have said today.

Q. Was Mr. Welliver's firm the one that represented the State Board at Dr. Freeman's hearing? Is Mr. Alex-
[fol. 24] ander a member of that firm?

A. Yes, he is.

Q. They were the ones that prosecuted Dr. Freeman before the Board?

A. They represented the Board, I understand.

Q. Did you ever talk to Mr. Trombley about this matter?

A. No, I didn't.

Q. You never discussed this matter with Mr. Trombley?

A. Not that I can recall.

Q. Did you ever discuss it with Mr. Van Laningham?

A. No.

Q. Did Mr. Van Laningham ever talk to you about this hearing?

A. No.

Mr. Croft: What hearing?

Mr. Wagner: This hearing that you are conducting today.

Mr. Baurichter: I told Mr. Van Laningham that I had received a subpoena. That was the extent of it.

By Mr. Wagner:

Q. Why were you talking to Mr. Van Laningham about the subpoena?

A. Just a matter of conversation. We were talking about our work and it necessitated that I tell him where I would be today. We discussed it. I said I was to be at Lee Tate Hall today.

Q. That was the only time you talked to Mr. Van Laning-
[fol. 25] ham about this matter?

A. That is the only time I can recall saying anything to him about it.

Q. Did you think it was very unusual when Mr. Zipkin told you, or told Mr. Grant, that he was a lawyer?

A. I felt that it was unusual because, as I said, at the time I didn't know his exact status.

Q. Did you rely on any advice he gave you?

A. I couldn't—Mr. Zipkin?

Q. Yes.

A. I can't remember him giving me any advice.

Q. Did you say anything to him when he said he was a lawyer?

A. As I said, I turned, became irritated and turned and went to the house.

Q. Did you say anything to him?

A. No, and—I don't know, you will have to talk to Mr. Grant.

Q. Did Mr. Grant say anything?

A. I don't think so—I don't know what Grant said.

Q. Did Mr. Grant use any violence against Mr. Zipkin?

A. As far as I know Mr. Grant never touched Mr. Zipkin.

Q. He didn't push him up against a tool shed?

A. As I said, I turned and went to the house. As far as I know, I don't know what he did to Mr. Zipkin.

Q. Would you say that he did or did not use violence against Mr. Zipkin?

[fol. 26] A. I would say he did not because I did not see him do it.

Q. Was a sheriff called on either of these two occasions that Mr. Zipkin and your wife were at your home?

A. Yes, they called the sheriff to gain entrance to the house.

Q. Why was the sheriff called?

A. To gain entrance to the house.

Q. Wasn't it because Mr. Grant was using violence against Mr. Zipkin?

A. That wasn't what they said. They said to gain entrance to the house.

Q. Who called the sheriff?

A. I don't know.

Q. Did Mr. Zipkin call the sheriff?

A. I don't know.

Q. You have five children do you not, Mr. Baurichter?

A. Yes.

Q. And didn't you think at the time Mr. Zipkin came out that he was sort of performing a humanitarian service for your wife?

A. I didn't know what Mr. Zipkin's motives were at all.

Q. You were all good friends at that time?

A. Yes, we had been.

Q. You were still friendly with him at that time?

A. We spoke.

Q. I think you told the Board, that you have no opinion as to his reputation in the year that you have known him? [fol. 27] A. I can honestly say that I don't know. Well, I don't have an opinion of his reputation. That is the truth.

Q. Well, did you have any opinion during the time that you were all friends and he was coming out to your house as a dinner guest. Did you have any opinion at that time about his reputation?

A. Well, I just knew him as a friend and that is just the extent of it.

Q. Would it be your testimony that you thought at that time that he had a good reputation or you would not have permitted him to enter your house or associate with you and your wife and five children?

A. Would you repeat that question?

Q. If you had thought at the time that he was a guest in your house that he had a bad reputation you would not have permitted him to associate with you and your wife and five children?

A. No, I welcomed him.

Q. So you thought at that time that he was a person of good reputation?

A. I had no reason to see otherwise.

Mr. Wagner: Yes, that is all.

By Mr. McQuie:

Q. Let me ask one thing. Have you seen Mr. Zipkin since the incident of the inventory being taken?

A. To my memory I have just seen him once.

Q. Where was he at that time?

[fol. 28] A. Well I went to pick up the children one day and I saw him loitering around the house. I didn't get to speak to him.

Q. Where were you to pick up the children?

A. Where my wife is recently living at the Rhoads Inn farm.

Q. And you saw Mr. Zipkin there that day, is that correct?

A. Yes, I saw him.

Q. That is the only time you have seen him since the incident of the inventory taking up until today?

A. It is the only time I can think of right now.

Mr. McQuie: That is all.

By Mr. Oliver:

Q. I would like to ask one general question, do you know of any incident other than what you have testified to, that would convince you, in your own mind, that Mr. Zipkin should not be permitted to have the opportunity to take the Bar Examination and become a lawyer and practice law in the State of Missouri?

A. Would you repeat that please?

Q. I said, do you know of anything, including the incident that you have testified about here, or anything else which you haven't testified about, that would convince you, in your own mind, of any reason why Mr. Zipkin should not be permitted to take the regular Bar Examination and eventually practice law in the State of Missouri?

[fol. 29] A. Well, I hardly think I would be qualified to answer that, I don't believe, that would be up to me to decide.

Q. Well, I am asking you the question whether it's up to you to decide or not. You see, if you answer that question, that you do not think he should be given that opportunity, then I would want to ask you why, on the basis of what fact do you predicate your judgment of him?

A. Well, all I can say to that question is that as I have stated before, when he said he was a lawyer, and he was

with my wife, I became confused. My attorney was out of town, and—but I hardly think that I should be qualified to say whether a man is entitled to be a lawyer or not.

Q. Well, do I gather from your answer, except for this incident that took place at the taking of the inventory, you have no factual information that you would like to have for the Board to have in considering the basic question?

A. I think you can—I think that is my general feeling, yes.

By Mr. Croft:

Q. One question, sir. At the time of the inventory taking and in connection with whatever statement was made by Mr. Zipkin as to being a lawyer, did he say he was your wife's lawyer or did he just state, "I am a lawyer"?

[fol. 30] A. He just said, "I am a lawyer".

Mr. Croft: I see. All right, that is all.

By Mr. Wagner:

Q. Just one question, the home that your wife is at, was that Rhoads Inn Farm?

A. Yes.

Q. It is owned by Dr. Freeman, is it not?

A. Yes.

Q. How was Mr. Zipkin dressed upon either one of the occasions when he came out to your house, do you recall how he was dressed. Was it in khaki pants and a sport shirt?

A. He wasn't elaborately dressed. Casually. I don't remember.

Mr. Wagner: That is all.

Mr. Oliver: That is all.

Mr. Croft: That is all, thank you very much.

(Witness excused.)

[fol. 31] EDMOND RALPH ANDERSON, JR., of lawful age, being produced, sworn and examined by the Board of Law Examiners, deposeth and saith:

By Mr. McQuie:

Q. Will you state your name and address please?

A. Edmond, with an "O", Ralph Anderson, Jr., 1513 Rosemary Lane, Columbia, Missouri.

Q. How old a man are you, Mr. Anderson?

A. Mr. McQuie?

Q. McQuie.

A. Mr. McQuie, I am thirty-three.

Q. What is your business or occupation?

A. I am—whoops, I am thirty-four.

Q. What is your business or occupation, if any?

A. I am a law teacher.

Q. What courses do you teach, Mr. Anderson?

A. I currently teach the courses in Remedies One, Remedies Two, Conflicts of Law, Trade Regulations and Sales.

Q. Are you acquainted with Michael Zipkin?

A. That I am.

Q. Is he seated here in the room?

A. Yes, he is.

Q. Would you point him out, please?

A. This gentleman (indicating).

Q. How long have you known him?

[fol. 32] A. I would say since the spring semester—let me get the exact date here—1958.

Q. Have you had any acquaintanceship with him other than as a teacher-pupil?

A. That I have.

Q. Would you state the circumstances of that acquaintanceship please?

A. Well, I have known him by seeing him in various places in the city of Columbia, I have encountered him at parties, I believe on occasions I have seen him at the roller skating rink, in fact, I am sure that I have. I think on one occasion, at least, he was in my house. I think I have seen him at the picnics, too. Things of that sort.

Q. Now, what were the occasions for seeing him at these

various places. Were these normal routine for law school or fraternities?

A. No, definitely not.

Q. What was the occasions and circumstances surrounding that?

A. Oh, they were social occasions.

Q. Now, are you a married man, Mr. Anderson?

A. That I am.

Q. And what is your wife's name?

A. Elizabeth Kasler Anderson, known as Libby Anderson.

Q. Has she at any time been a patient of Dr. Freeman?

A. That she was, a number of times.

Q. Has your acquaintanceship or relationship with Mr. Zipkin grown out of, in any way, your mutual acquain- [fol. 33] tanceship with Dr. Freeman?

A. I suppose so.

Q. Do you know whether Mr. Zipkin had been a patient of Dr. Freeman?

A. I think so.

Q. As part of Dr. Freeman's therapy for his patients, does he organize, or was he in the habit of organizing group social functions such as you have just mentioned? Roller skating parties and so forth?

A. Well, I don't know that he organized them, but he may have stimulated them.

Q. Was he present on some of these occasions?

A. Yes, he was.

Q. How big a group would you say was together on these occasions?

A. Oh, it varied. I suppose, on occasion, the group may have been as small as seven to ten. On other occasions it may have been as large as thirty or so. So I couldn't tell.

Q. What was your understanding of the relationship between Dr. Freeman and Michael Zipkin?

A. Oh, I think they were fairly friendly.

Q. Was this a social relationship or a business relationship, if you know?

A. I assumed it was a social relationship.

Q. Have you at any time talked with Mr. Zipkin about his relationship with Dr. Freeman?

A. I think I have.

[fol. 34] Q. Has he at any time stated to you that he was Dr. Freeman's attorney?

A. No, no.

Q. Has he at any time ever stated to you that he represented Dr. Freeman on legal matters?

A. Oh, no. Definitely not.

Q. Did he ever state that he had helped Dr. Freeman in any way?

A. No, I don't think so.

Q. Well now, you stated you don't think so?

A. Well, after all, when we were at the roller skating rink in groups, or picnic groups, he may have helped organize getting the people there or something.

Q. Are you acquainted with the fact that Dr. Freeman was called for a hearing before the State Board of Healing Arts in the summer of 1960?

A. Oh, yes. Widely publicized and discussed in conversations and by rumors in this area.

Q. Did you ever have occasion to talk to Mr. Zipkin about this hearing?

A. No.

Q. Has it ever come to your attention or knowledge that Mr. Zipkin was representing or aiding Dr. Freeman, in any way, in preparing for the hearing?

A. I have no first-hand knowledge of any such thing. I do have, and my wife has friends who have made statements of one sort or another in small talk among themselves and there was a suggestion that perhaps Mike Zipkin was giving some moral support to Dr. Freeman as a friend [fol. 35] or as a person who would stand by him.

Q. What do you think is meant by the term, "moral support"?

A. Oh, again this is all very much hearsay because I didn't hear any of it directly. I have heard something to the effect that maybe Mike Zipkin helped Dr. Freeman to move goods to the farm or move goods away from this farm that Dr. Freeman bought. I have on occasion seen Mike Zipkin's car in front of Dr. Freeman's office at extended times in the spring of the year and I suspect maybe

Michael Zipkin was perhaps helping haul goods or something like that. I don't know. Again, it is all second-hand knowledge. I don't know myself.

Q. Did it ever come to your attention that he was interviewing witnesses or gathering evidence in preparing to go before the State Board of Healing Arts?

A. No, I know nothing about that. Again, since there are a lot of rumors going around, one rumor is that perhaps he was doing so, but I don't know anything about it.

Q. Where did you hear that rumor, Professor Anderson?

A. Well, I talked to a lot of people and I have heard a lot of things from them. It's hard for me to say just where I heard that. I know the case has been discussed among the members of our law faculty and I think at one luncheon either Mr. Peterson or Mr. Eckhart, who are on the law faculty here, made the statement that they had heard [fol. 36] something about intimidation of witnesses or something of the sort in the Zipkin situation.

Q. When would that have been in point of time with reference to the June 1960 graduation?

A. It would be after. It would be in the summer, the summer of this year.

Q. Was your wife subpoenaed as a witness in this hearing before the State Board of Healing Arts?

A. No.

Q. Was she interrogated by attorneys for either side in reference to possible testimony at the hearing?

A. No. We have wondered why she wasn't, but she wasn't.

Q. Has she ever had any contact with Michael Zipkin with regard to her testimony or possible evidence at such a hearing, if she was called?

A. Gosh, I don't think so. I don't know, but I don't think so.

Q. I understand your answer is you don't know?

A. That is right. If it so occurred, I don't know anything about it.

Q. Are you acquainted with Ada Margaret Baurichter?

A. Yes, the young lady is outside today.

Q. When did you first become acquainted with her?

A. It is hard to say exactly when, but I would imagine in either the fall of 1958, or the spring of 1959, somewhere [fol. 37] along in there.

Q. And was this acquaintanceship commenced in the same way as the acquaintanceship of Mike Zipkin?

A. No, my acquaintanceship with Mike Zipkin began with his being a student in an Equity One course.

Q. How was your acquaintanceship with Margaret Baurichter commenced?

A. I imagine the first time I saw her was at one of these parties, a skating group or skating meeting or somewhere like that. I can remember Ada Margaret quite a while back. I didn't know her last name was Baurichter until about the time of her divorce proceedings or maybe slightly before that.

Q. Have you ever talked with her, or anyone else, about her divorce proceedings?

A. I have never talked to her about it. I have talked to other people, people have asked me about it. I even went down to the Courthouse and went through the records of the Circuit Clerk's Office in this case.

Q. Have you ever heard or learned that Mr. Zipkin professed to represent Ada Margaret Baurichter in this divorce action?

A. No, no, of course not. I don't know who the attorneys are. It seems to me it was Carl Sapp representing her. I am not sure about that.

Q. Have you ever heard that Mr. Zipkin was assisting Carl Sapp in the representation of Mrs. Baurichter in this [fol. 38] divorce action?

A. No, I haven't, and my feeling would be that Carl Sapp would not have wanted any help of that sort.

Q. Do you know whether or not Mr. Zipkin has aided a Mrs. Baurichter in moving furniture and so forth from her husband's home to somewhere else?

A. I don't know that first hand, but I have heard that. Again by circular sources, just exactly which source, I don't know.

Q. Have you heard of any of the circumstances of these

instances of aid given by Mr. Zipkin to Mrs. Baurichter?

A. I have not heard them, but in line with the circular rumors or stories that have been passed on that have reached me, there was one—

Mr. Wagner: I am going to object to this testimony as being hearsay. I want the Board to know all the facts, but a lot of his testimony has been hearsay and I have just let it go on.

Mr. Croft: I think we will sustain the objection on that.

By Mr. McQuie:

Q. Professor, you are acquainted with the requisites of becoming a member of the Bar of the State of Missouri, are you not?

A. I think so. May I inquire who this gentleman is that made an objection?

[fol. 39] Mr. Wagner: My name is Louis Wagner. I represent Mr. Zipkin.

Professor Anderson: Louis Wagner. Thank you. Continue please.

By Mr. McQuie:

Q. You know, do you not, that the rules of the Supreme Court state that an applicant for admission to the Bar must be of good character and have a general fitness to practice law?

A. I do.

Q. And based on your acquaintanceship with Mr. Zipkin's friends and associates and people that know him, do you have any opinion as to his character, whether he will meet the requirements or does meet the requirements for admittance to the Missouri Bar?

A. I think he does. Of course, we all aren't perfect, I myself, know of a number of lawyers whose character I will put considerably behind Mr. Zipkin's.

Q. Of course, you don't consider that standard is a general character of the present members of the Bar, do you?

A. No, I don't. But nevertheless, I feel that we have

in our Bar people of moral standards that leave something to be desired. That makes an impression upon me whether they were completed twenty years ago or thirty years ago, or whenever.

Q. I don't understand. Perhaps we are digressing too [fol. 40] far. You are not telling the Board that the fact that we have persons in the Bar Association that don't come up to what you would state as a minimum standard, that fact doesn't mean that we can admit any new members that perhaps don't come up to the same minimum standards, but at least come up to the standards of the men who have passed the Bar already?

A. No. My position on it is this: I have feelings about certain members of our profession whether they were admitted twenty years ago, or when, whose character I will not vouch for. I am reasonably willing to vouch for Mr. Zipkin's character. I find too, Mr. Zipkin's character is, as I say, considerably higher than some of these others in my own mind. I do have some, very faint, reservations about Mr. Zipkin, or anyone else, in the present group who are being admitted to the Bar. I am not sure, for instance, that we are admitting to the Bar some people whose characters are not perfect, but who is perfect?

Q. What specific reservation did you have in mind in regard to Mr. Zipkin?

A. The only thing that has ever bothered me about Mike Zipkin, and this bothered me a little bit—I think it is personal to me—and that is Mike told me one time that he had worked in an election precinct in Kansas City as a Democratic election judge, and when people came in to vote in [fol. 41] the precinct and said they wished to vote for Mr. Symington it was Mr. Zipkin's disposition, from his own statement to me, to follow what had been told him by others to help them vote the straight Democratic ticket. Now I know some of you may like it. I don't like it. I have fought against that sort of thing for years, but my gosh, this is a minor thing to worry about, and I won't worry about it.

Q. What other specific reservation did you have?

A. None.

Q. Now, as far as general fitness goes, do you think, generally, he is fit to be a member of the Bar of the State of Missouri?

A. I do.

Q. Let me ask you, in regards to these statements by other members or these discussions among members of the faculty in regards to Mr. Zipkin's testimony on behalf of Dr. Freeman, when did these take place, those discussions?

A. This summer.

Q. And in point of time, would that have been before or after graduation?

A. After.

Q. You don't recall any discussion or any comment from faculty members at that time? I believe you said a luncheon before graduation, is that correct?

A. No.

Mr. McQuie: That is all the questions I have, Mr. [fol. 42] President.

Professor Anderson: I wish to say one thing. I am a strong Republican, so when anyone helps in a Democratic election getting votes, it disturbs me.

By Mr. Donnelly:

Q. Let me ask you this question: was your wife a patient of Dr. Freeman's at the time you first met Mr. Zipkin?

A. Yes, sir.

Q. And she had been attended by Dr. Freeman for a period of time before you became acquainted with Mr. Zipkin?

A. Well, she started the treatment by Dr. Freeman in December of 1955.

Q. And you knew Mr. Zipkin for the first time when?

A. About the spring semester of 1958.

Q. Now your acquaintance with him was derived, came about primarily, through these social groups that Dr. Freeman would stimulate?

A. No. My acquaintance with Michael Zipkin came from his being in my class in Equity One.

Q. Probably, I did not phrase my question correctly.

The social end of your acquaintance with Mr. Zipkin, did that come about by reason of these groups stimulated by Dr. Freeman?

A. Well, I will say this: since I knew Mike Zipkin in class, when I would see him at some other group or party, [fol. 43] I would tend to talk to him rather than someone else I didn't know. So I got to know him better that way.

Q. Now, your testimony is, I believe, that you have no personal knowledge of whether or not Mr. Zipkin carried on any investigation for Dr. Freeman in connection with this hearing before the State Board of Healing Arts?

A. That is right. I have no personal knowledge. I have grave doubts that he would do anything like that.

Q. You had no conversation with him concerning such?

A. No.

Q. And you have no personal knowledge of whether or not he talked to witnesses in behalf of Dr. Freeman for this purpose?

A. I have no personal knowledge of that. Again, as I say, I doubt that he would.

Q. Do I understand then, that your opinion of his assistance to Dr. Freeman is strictly the nature of hauling goods out to the farm and lot?

A. I don't even know that. As I say, I have been told by other people. The story got to me that he did that.

Q. Now one other question; you stated your personal opinion concerning Mr. Zipkin, his character and general fitness for admission to the Bar or at least to take the examination to the Bar. Are you acquainted with the reputation in the community where he lives for good charac- [fol. 44] ter or for truthfulness and morality?

A. Everybody that I know whose judgment I would respect around here has also thought well of Michael Zipkin, and in Kansas City where I understand he lives now, former students of mine speak well of him.

Q. Would you then say that you are acquainted with his reputation in the community where he now lives?

A. Before he left law school?

Q. In the community of Columbia.

A. Well reasonably, yes.

Q. And your understanding of this reputation is, you said, "good"?

A. Yes.

Mr. Donnelly: That is all.

By Mr. Oliver:

Q. One question. Has Michael Zipkin ever been the subject of a discussion at a faculty meeting?

A. Yes. The faculty meeting, either the last or next to the last, the dean, Mr. Covington said—

Mr. Wagner: Now, we are going to object to this testimony as being hearsay.

Mr. Croft: I ask you to be patient with the Board. I want the Board to have the benefit of what transpired in the case, but as to hearsay testimony—it will be overruled at this time.

A. (continuing) —the dean said that the hearing was to [fol. 45] be held on some Friday in this room. One faculty member, I don't know which one, inquired, "Why this room, why not somewhere else in town." Another faculty member thought it might be a good thing to have it in this room. Dean Covington stated whoever had called him about it on the Bar Committee had requested this room, so he saw no reason to raise any point about that.

Q. The matter of demerits was not a subject of discussion at those meetings?

A. No.

Q. Other than this incident, throughout Michael Zipkin's attendance at the University of Missouri was there any discussion that might reflect upon his moral character?

A. No.

Mr. Oliver: No further questions.

By Mr. Seiler:

Q. Was Mr. Trombley one of your students here?

A. Yes, indeed.

Q. What is your opinion about Mr. Trombley's reputation and character and truthfulness and so forth?

A. Good. I used to think of the two Michaels together. Michael Zipkin, as I understand, was a patient of Dr. Freeman's and Michael Trombley was also. I liked them both. I felt a little stronger kinship to Michael Zipkin than I did to Michael Trombley because he comes from a more wealthy background. In a way, Michael Trombley [fol. 46] was—a kind of high society type. Whether he ever got there or succeeded, I don't know. I just didn't see things the way he did and I think his relationships with Dr. Freeman's friends were, perhaps, up and down. Perhaps wilder than some of the rest, and I feel that Michael Zipkin is to be commended in this, compared to Michael Trombley.

Q. What did you object to about Mr. Trombley's relationship with Dr. Freeman as compared to Mr. Zipkin's relations with Dr. Freeman?

A. I think Michael Trombley would be more interested in a wilder existence, less conservative, perhaps.

By Mr. Donnelly:

Q. Would you define the word "wild"?

A. Oh, late hour parties and loud talking. I can remember, for instance, on occasions when Dr. Freeman had a group at his house playing the recorder, or something like that, and late in the night after there had been some drinking, why, Michael Trombley perhaps felt a stronger kinship for Dr. Freeman. I remember him calling him "Big Daddy." This was shortly after the movie "Cat on a Hot Tin Roof". This is the kind of thing that Michael Zipkin would not do. I think he would just sit there and be sensible. I don't even remember if he was in this group. He was less prone to that sort of life. I think Michael [fol. 47] Trombley has changed radically, and he is considerably conservative now. This is how I observed them at that time.

By Mr. Oliver:

Q. The point is, regarding these two young men, do you know whether there was a falling out between these two from their prior association?

A. I know nothing about that. All I can say is what I have heard about this in a circular means.

Mr. Croft: Well let's not go into that.

By Mr. Wagner:

Q. I have one question. Professor, isn't the policy of the school that each prospective candidate and graduate be interviewed by the Dean as to their fitness for graduation?

A. I don't know of that policy. If it is, it's not very clear.

Mr. Wagner: That is all.

Mr. Croft: Thank you very much. Would you ask the Dean to step in?

[fol. 48] JOSEPH COVINGTON of lawful age, being produced, sworn and examined by the Board of Law Examiners, deposeth and saith:

By Mr. McQuie:

Q. State your name and address please?

A. My name is Joseph Covington, Columbia, Missouri.

Q. Would you state your profession?

A. Dean of the Law School, Missouri University, Columbia, Missouri.

Q. Are you acquainted with Michael Zipkin?

A. Yes, I am.

Q. And is he this gentleman seated immediately to your right, is that correct?

A. That is correct.

Q. And how long have you known him, Dean Covington?

A. The first I remember him as a student was when he was in a mock court case in 1958 or '59. Late '58 or early '59.

Q. And had your acquaintanceship with him been other than as teacher and pupil?

A. No, he has never been in my classes at all.

Q. Then has your acquaintanceship ever been other than as an official capacity?

A. That has been my only association.

Q. You don't know him socially or had never met him that way?

A. No.

Q. Now, Dean, you are acquainted with the general re- [fol. 49] quirements of character and fitness for application to take the Bar Examination and become an attorney in Missouri, are you not?

A. That is true.

Q. And based upon your observation and knowledge of Michael Zipkin, what would be your opinion as to whether he met the minimum requirements of character and general fitness?

Mr. Wagner: Just a minute Dean, we are going to object to that for the reason no proper foundation has been laid for an opinion by the Dean in respect to Mr. Zipkin's fitness to take the examination.

Mr. Croft: Objection overruled.

A. I have no personal knowledge that would prohibit his serving as an attorney.

Q. Now, are you acquainted with his reputation among his acquaintances and associates in and about Columbia?

A. No, I'm not.

Q. Has his name ever come up in faculty meetings conducted by you here in the University Law School?

A. No.

Mr. Croft: Do you mean when Mr. Zipkin was a student?

Mr. McQuie: Yes, while he was a student.

Dean Covington: Yes, that is correct.

By Mr. McQuie:

Q. And since that time there had been some mention at a meeting?

[fol. 50] A. At the last faculty meeting, a couple of weeks ago, after I was to appear in this and after you requested this room to be used for this hearing, I told the faculty that this hearing would be held regarding Mr. Zipkin because I knew that the story would get around as to what was going on. I told them what the room was going to be used for. That is the only time his name had been mentioned at a faculty meeting as far as I can recall.

Q. Are you acquainted with Ada Margaret Baurichter of Columbia, Missouri?

A. No.

Q. And are you acquainted with, or have you heard of, Dr. Freeman?

A. I have heard of Dr. Freeman, yes.

Q. Have you heard of Mr. Zipkin being associated with Dr. Freeman in any way?

A. I am not sure. Would you re-state the question?

Q. Have you ever heard of Mr. Zipkin being associated with Dr. Freeman in any way?

A. I have heard only just casual statements, that is all.

Q. You have never talked with Michael Zipkin about Dr. Freeman?

A. No, I have not.

Q. Have you had personal conversations with Mr. Zipkin, at all, when he was a student?

A. Yes, I have on two or three occasions following the trial. Of course, and then last spring he was missing a good [fol. 51] many classes, and I put him on probation for missing classes. He explained that he was working, but I also talked to him about a job, I think, over at the University Hospital. He had a hard time getting to his early morning classes, so I called him in the office and told him he was going to have to come to class. Those are the only two actual contacts that I had with him other than in the hallway where we would, oh, just speak and pass. Then the time when his wife had a baby, he came in the office to tell me he was going to miss class at that time.

Q. Did I understand you to say that you had talked with Mr. Zipkin following the Freeman hearing?

A. No.

Q. Are you acquainted with the fact that Dr. Freeman had a hearing?

A. I read of it in the newspaper.

Q. But you didn't testify that you had a discussion with Mr. Zipkin after that hearing?

A. No, I don't think I have even spoken to him.

Mr. McQuie: That is all the questions that I have.

By Mr. Seiler:

Q. Dean, as dean of law school, if information ever came to your attention that some member of the student body [fol. 52] was associating with known criminals and spending his time in their company and things like that, to illustrate extreme cases, would you not make it your business, as Dean, to inquire into that to some extent and find out whether or not one of your law students was tread ing on pretty dangerous ground?

A. As you say, I think if it was an extreme case, we would.

Q. Have you ever had anything like that to come to your attention in regards to Mr. Zipkin? Has anything of that sort ever come to your attention as Dean? I realize it is hearsay about rumors that have come to your attention.

A. It has not.

Q. At any time?

A. No.

Q. The matter of Mr. Zipkin being present—I guess that has been established by the evidence, I didn't hear all of it, but if so—the matter of Mr. Zipkin being present at the so-called group sessions, or whatever the name of them was, that Dr. Freeman apparently had for his patients' treatment, nothing like that ever came to your attention?

A. I did not know that he was ever present at them.

Q. Did the matter of such sessions come to your attention whether Mr. Zipkin was there or not?

A. Yes.

Q. Did they come to your attention in a way that it [fol. 53] presented some question about the propriety of such meetings?

A. Yes, it was.

Q. I wish you would tell us just what you heard about the meetings of that sort or sessions of that sort. I realize there were rumors, but I am speaking of it now with reference to one of your students being present on some of them?

Mr. Wagner: Just a minute Dean. I want to offer an objection for the record as being hearsay.

Mr. Croft: It will be overruled at this time.

A. I am trying to recall. It actually did come to my attention, but it came to my attention through Mr. Long who is the University Security Officer. Mr. Long has talked to me about the fact. This was the first time I ever heard about Dr. Freeman meeting some of his patients out at some club. I don't remember the name of the club, and he said that Dr. Freeman would meet some of his patients out there and that he would call some of them off and talk to them, and he mentioned that some law students were there. Whether he mentioned Mr. Zipkin or not, I don't recall, I can't be certain. I don't have any specific recollection.

Q. Now, was there an investigation made by you, as Dean, as to whether or not any law students were engaging in anything like that?

[fol. 54] A. No, no, I had assumed that Mr. Long as Security Officer would if anything of a criminal nature went on, as we spoke of earlier, that he would report it to me.

Mr. Seiler: I believe that is all.

By Mr. Oliver:

Q. Who is the professor that teaches Legal Entrance at the present time?

A. Mr. Proctor teaches courses in legal professions.

Q. That is a required course for all students?

A. Yes it is.

Q. What other procedures does the faculty establish, what other procedures, if any, to inquire into the requirements for admission to the Bar on having good moral character.

A. I think generally that our approach to that, particularly with the representation the last two years of the Missouri Bar, that is, as long as I have been here, we have pretty well relied upon the Bar for any investigations. Of course, if anything came to my attention that I thought was of such reprehensible character then we would call him into the office and talk to him. I have done that at times.

Q. Would you also relay that information to the Board, as a matter of course for further examination?

A. I am not sure that I would unless some question was made for it as a general policy. If it were, I would do that. [fol. 55] So far, I have had no request of that kind.

By Mr. Croft:

Q. As I understand it, Mr. Zipkin graduated in the last June class?

A. That is correct.

Q. Since that time have you heard any rumors or received any information which if you had received while he was still a student you would have thought was of a serious nature, enough so as to require some investigation by you as to Mr. Zipkin?

A. Yes.

Q. And what nature were these reports that would have prompted such an investigation?

A. Of course, these were rather general reports.

Q. I understand. We are talking not about the truth or lack of truth of the reports—my question is what was the nature of the reports?

A. The nature of the report was that Mr. Zipkin had—the words used were, "intimidated some witnesses."

Q. Is that witness in connection with the hearing of Dr. Freeman?

A. Yes, that is correct.

Q. Were there any names mentioned as to what witnesses were intimidated?

A. I don't know. None. I think somebody said it was a doctor—that was the way the word came to me.

Q. That a doctor was intimidated?

A. That is what I gathered, as you might say.

[fol. 56] Q. And Mr. Zipkin's name was connected with that?

A. That is correct, but since he had already graduated, the matter was past any jurisdiction of ours.

Q. Is that the only report or rumor in regards to Mr. Zipkin that might have prompted you to investigate if he had then been a student?

A. Yes, it is.

Q. Did you hear that report widely, just once, or what?

A. Oh, I would say two or three times, probably in the faculty, maybe a faculty member. It was only in the law school where I heard it, not outside the law school.

By Mr. Donnelly:

Q. After Zipkin graduated?

A. Yes, that is correct.

Q. Did it relate back to a time prior to graduation?

A. I do not know whether it really happened. He had graduated and taken the Bar and so I cannot say as to that.

Q. Do I understand that you had no conversation about Mr. Zipkin with reference to that matter you had been discussing with any faculty member prior to Mr. Zipkin's graduation?

A. I don't recall hearing about it until after graduation. The first that I had heard about it was someone said, some faculty member, I don't recall who it was, that the Missouri Bar Committee was investigating this. That is the first information I had.

[fol. 57] Q. That is your first knowledge?

A. Yes.

By Mr. Oliver:

Q. Dean, there had been a good many rumors, particularly after the Freeman hearing by the State Medical Board?

A. What kind of rumors?

Q. All kinds of rumors.

A. Yes, there had been a good many rumors.

Q. As best we can figure out, as someone described it as a "mares nest", would you say that would be a reasonable, accurate characterization of the general state of affairs?

Mr. Croft: I think before the witness answers that question, you should define what you mean by a "mares nest."

By Mr. Oliver:

Q. Do you understand what I mean by "mares nest", Dean?

A. No.

Q. I withdraw the question then.

Mr. Croft: Mr. Wagner.

By Mr. Wagner:

Q. Dean, do you recall who reported that incident to you?

A. One of the faculty members, I don't recall who it was. It might have been Eckhart or someone else, I just don't know.

Q. Did you give any sigaificance to that rumor?

A. What do you mean by significance?

[fol. 58] Q. Well, you didn't report it to the Board of Law Examiners.

A. The first word that I had was it was being investigated by the County Committee, who I knew represented these gentlemen.

Q. That was before the examination was taken?

A. No, I don't think it could have been. I don't know.

Q. Now Dean, is it a policy of the school that the graduates background, fitness and character of every prospective candidate that has graduated is thoroughly investigated?

A. Not by us, no.

Q. Who does that?

A. The Board of Law Examiners and the Supreme Court.

Q. And do they send you a list of all those on the approved list?

A. (Nodding no.)

Q. How do you know who is to graduate?

A. All we go on is the information we have, our own resources. We don't call the people.

Q. Don't you check their grades and background?

A. We check grades, yes.

Q. What else do you do?

A. All we go on is the grades and what we know about the individual.

Q. In what specific way do you know about the individual?

A. All we know is what we go on. As to investigations, we believe the Missouri Bar is doing that.

Q. Your records then reflected that he had good grades [fol. 59] and good background and you would have graduated him?

A. As far as we know, that is correct.

By Mr. Oliver:

Q. Dean, as a matter of information, is the honor system still in effect?

A. Yes, it is.

Q. When was the last time there has been a student proceeding?

A. February.

Mr. Oliver: No further questions.

By Mr. Wagner:

Q. Just one question, Dean. Have you heard any similar rumors regarding any other law students?

A. Oh, yes, rumors about that.

Q. In regard to the unauthorized practice of law, representing themselves as attorneys or interviewing for attorneys?

A. No.

Q. You consider it a practice of law to interview witnesses in a case?

A. I believe that some of our students act as investigators for some of the lawyers here in town.

Q. Yes. For insurance companies?
A. Yes.
Q. Before taking the bar?
A. Oh, yes.

Mr. Wagner: I think that is all.
Mr. Croft: Thank you very much, Dean.

[fol. 60] Ada Margaret Baurichter of lawful age, being produced, sworn and examined by the Board of Law Examiners, deposeth and saith:

By Mr. Wagner:

Q. State your name to the Board please?
A. Mrs. Ada Margaret Baurichter.
Q. Where do you live?
A. On Route 1.
Q. Is that in the County or in Columbia?
A. In the County.
Q. In the county, and you are the wife of Mr. L. D. Baurichter?
A. That is right.
Q. And you are the mother of five children?
A. Yes.
Q. You and Mr. Baurichter are now separated?
A. Yes.
Q. And Mr. Carl Sapp now represents you in a divorce action which you have brought against Mr. Baurichter?
A. That is right.
Q. Now directing your attention to the incident at the farm that was operated by Mr. Baurichter, during your separation did you enlist the aid of any person for the purpose of assisting you in obtaining certain pieces of personal property or furniture—
A. I did.
Q. (continuing) —that was still in your home? Whose [fol. 61] help did you solicit?
A. I asked Mr. Zipkin if he would help move some of the heavier pieces of furniture that I was unable to handle alone.

Q. Did you discuss this with Mr. Sapp before you solicited Mr. Zipkin's help or aid in this?

A. Not the day I moved the furniture, no. At that time I hadn't obtained a lawyer. I was just moving out.

Q. I see. Was there anything unusual that happened on that occasion between you and Mr. Baurichter or Mr. Zipkin?

A. Well, Mr. Zipkin and I drove over in my husband's car. Mr. Grant, that works on the place, met us and ordered Mr. Zipkin off the farm. He asked him what he was doing there, and he said, "I have come to assist Mrs. Baurichter in moving some of the heavier pieces of furniture that she wanted moved." And then he called him a son of a bitch and a hook nosed jew and a few other things.

Q. Who did that?

A. My husband. They told him to remove himself from the property, and asked him not to go into the house, which he did not do. I then called the sheriff.

Q. Who was present on that occasion?

A. Mr. Zipkin and myself, Mr. Grant and Mr. Baurichter, and my three older children.

Q. Now, was there any violence used by any of the per-
[fol. 62] sons there?

A. Not that day, no.

Q. Was there any violence used subsequent to that day?

A. The second time Mr. Zipkin made the trip with me, yes.

Q. What occurred that time?

A. Well, James Earl kept trying to pick a fight. He laid his hands upon Mr. Zipkin and pushed him against the side of the little building we were in taking inventory, the small tool shed.

Q. Did you ever hear any statement made by Mr. Zipkin that he was a lawyer?

A. He said, "I'm studying to be a lawyer and I possibly know more of the law than you do." This is the only time I ever heard him make a statement.

Q. On either one of these occasions did he say to either Mr. Grant or your husband, "I am a lawyer"?

A. No, sir.

Q. You're positive about that?

A. I am positive. Why should he represent himself as a lawyer when he really wasn't.

Q. Was he going to school at that time?

A. He was.

Q. Did your husband know that he was a law student, at that time?

A. Yes, sir.

Q. Did Mr. Grant know he was a law student, at that time?

A. I imagine so, yes.

[fol. 63] Q. He had not, as yet, graduated?

A. That is true.

Q. Has your husband ever accused Dr. Freeman of being responsible for your divorce action?

A. Yes, sir. I think, if you will read his testimony at the Dr. Freeman hearing, you will see that this is what he said, "I had a happy life and a happy home until Dr. Freeman came into the picture."

Q. Do you think that your husband thought well of Dr. Freeman or did he indicate to you that he disliked him in any way?

A. No, sir. Except that he had thought about it and he thought that he would be willing to enter any kind of business arrangement with Dr. Freeman. He thought he was honest and all. This was up until the time we decided to buy the farm together and suddenly he changed his mind.

Q. Now you are living on a farm owned by Dr. Freeman?

A. Yes, sir.

Q. Now, did James Grant ever come out to your farm?

A. He did.

Q. When was that?

A. Well, upon two occasions he came out. One evening in the company of some other fellows around ten-thirty in the evening. They were drinking. Then, he came back once after that. He called me and asked me if I would be alone and at home for awhile, he would like to talk with me.

[fol. 64] Q. Did you ever leave any messages for him to come to see you?

A. No, sir.

Q. Was he intoxicated on either one of those occasions?

A. Well, he was drinking on the first occasion, yes, sir.

Q. What was his purpose in coming out to talk to you?

A. You mean the time he called?

Q. The first time.

A. Well, I gathered, from the conversation, that probably he was responsible for the vandalism that had taken place, and they were out to see if we suspected him.

Q. Did you suspect him?

A. I hadn't until that time, no, sir.

Q. Had you accused him up until that time?

A. No.

Q. How long have you known Mr. Zipkin?

A. Oh, approximately a year and a half, I suppose.

Q. Has he been a dinner guest in your home?

A. Yes, he was a dinner guest when we were at Route 3, also.

Q. What about when you and Mr. Baurichter were living together, how many times to your judgment did he come to dinner?

A. When we were there it was a ham breakfast. I remember one time on Route 3, and I don't know of any others. I don't recall any more.

Q. You have been a patient of Dr. Freeman?

[fol. 65] A. Yes, sir.

Q. The same time that he was a patient?

A. That is true.

Q. And that is how you became acquainted with him?

A. That is true.

Q. And do you have any opinion at this time, Mrs. Baurichter, of Mr. Zipkin's reputation and morality in the community in which he lived at the time when he attended school or before he moved to Kansas City?

A. I don't know of any.

Q. Of his reputation?

A. Only just what I have seen and what I have heard. He was very highly spoken of. I never seen anything—

Q. (Interrupting) You would say his reputation was good?

A. I would.

By Mr. McQuie:

Q. What was the date of this trip by, I believe, you and Mr. Zipkin to the home that you and your husband lived in for removing the furniture.

A. Well, the second day of May was when I moved out. Second or third, I don't recall exactly.

Q. Now, subsequent to that time, how many trips did Mr. Zipkin make out there to that home for the purpose of moving furniture or taking inventory on the property or such things as that?

A. Before that time?

[fol. 66] Q. After that time.

A. He has only been there the one time.

Q. One other time?

A. That is right.

Q. What was that occasion?

A. Well, Mr. Sapp wanted me to go back and take inventory of what was left on the farm, and I was a little reluctant to go alone. He said to take someone with me, Mr. Zipkin agreed to accompany me.

Q. What date did he advise that?

A. I don't really know. It was sometime the latter part of June, middle of—I don't know, I don't really remember.

Q. Well, is there any way you could be more specific about it?

A. Well, let's see—I guess before that I moved out to the farm on the third—the sixth of June, I believe. It was before that.

Q. Do you recall whether the Democratic National Convention was going on.

A. No, sir, I don't keep up with politics.

Q. Now, how long prior to the third of May did you know Mr. Zipkin?

A. I don't really remember. I said, I think, I have known him approximately a year and a half. Something like that. Since I have been going to Dr. Freeman.

[fol. 67] Q. That was when you first met him, is that correct?

A. Yes. I don't think I met him right away then. It was in April 1959 that I began there.

Q. How would you characterize your acquaintanceship with Mr. Zipkin? Are you close friends?

A. No, he was just a casual acquaintance that you meet, as you meet a lot of them, and he does come to the farm and help Dr. Freeman, as a lot of patients do.

Q. How is it that you asked Mr. Zipkin to go help move this furniture?

A. Well, Dr. Freeman said he was available and that he would be glad to go, so I asked him. I didn't really have anyone in my mind that I knew to come with me.

Q. Dr. Freeman suggested him then, is that correct?

A. Yes, after Mr. Sapp said to take someone with me.

Q. Mr. Sapp told you to take someone with you to move your furniture, is that correct?

A. No, sir. I had not consulted with a lawyer the day I moved out of my home.

Q. I said, how was it you asked Mr. Zipkin to go with you to move this furniture?

A. Well, Dr. Freeman told him I was moving out. I couldn't possibly move by myself.

Q. In other words, Dr. Freeman suggested that you take Mr. Zipkin along?

A. That is true.

[fol. 68] Q. Now, to your knowledge what was the relationship between Dr. Freeman and Mr. Zipkin?

A. Well, the same as it is now, I suppose.

Q. And what is that relationship?

A. I don't know. I am not acquainted with relationships between people. Mr. Zipkin is only a casual friend and, therefore, I would not know.

Q. Mr. Zipkin is only a casual friend of yours?

A. Only a casual friend of mine.

Q. Dr. Freeman?

A. I know nothing of the friendship between Dr. Freeman.

Q. Do you know whether he was a patient of Dr. Freeman's or not?

A. Well, yes, I knew he had been a patient.

Q. Now, you moved from the home that you and your husband formerly occupied to where?

A. To an apartment out above Dr. Freeman's office.

Q. To an apartment above Dr. Freeman's office and from there you moved to Rhoads Inn, is that correct?

A. That is true.

Q. Now during this period, where did Mr. Zipkin live?

A. I don't know.

Q. When did you last see Mr. Zipkin prior to today?

A. Well, I don't know. It's been a month ago, I guess.

Q. Until sometime when you arrived in Columbia today, [fol. 69] it was the first time you had seen him prior to a month ago?

A. I would venture to guess about a month.

Q. Where was it that you last saw him?

A. Well, he came out to the farm to work and do various things. I suppose that is where I last saw him.

Q. What kind of work was Mr. Zipkin doing around the farm?

A. Oh, various things. They sawed boards, painted the roof, and planted a garden that we had, just various things.

Q. How big a farm is it?

A. One hundred ninety acres.

Q. Is it rented out?

A. Yes, sir.

Q. Who is it rented to?

A. Bryan Nelson.

Q. When Mr. Grant came to your home at Rhoads Inn the first time, you say he was in the company of two other persons, is that correct?

A. There was one other fellow who came to the house, and they said there were four other boys besides James Earl and this Mr. Gibson. Who they were, I don't know. I didn't see them.

Q. They were drinking on that occasion?

A. Yes, sir.

Q. Who else was present in the house then?

A. My five children and Mr. Zipkin.

Q. Did you report to the Prosecuting Attorney that Mr. [fol. 70] Grant might possibly be the person that committed the vandalism about your place?

A. No, sir. I reported it to the sheriff of Boone County.

Q. You did report it to the sheriff?

A. I did. After I told him I suspected him—this Mr.

Gibson and Mr. Grant—as I understand it, the Prosecuting Attorney picked them up and talked with them and asked Mr. Sapp if I wanted to press charges, and he said all she wants is to be let alone, and if it happens again she certainly would press charges.

By Mr. Seiler:

Q. Did you move from the farm to the apartments above Dr. Freeman's offices?

A. From the farm on Route 3, yes.

Q. And did you take the five children with you?

A. I did.

Q. So that you and the five children are living there?

A. That is true.

Q. That apartment is large enough—I mean is it several apartments there or one?

A. One large apartment; bedrooms, dining room and kitchen.

Q. What is that address?

A. 1621, I believe, Broadway, East Broadway.

Q. Now, I understand you told Mr. McQuie you didn't know where Mr. Zipkin was living during that time? [fol. 71] A. That's right. I don't know where he was living during that time.

Q. How long did you live at the apartment?

A. I moved in on the third of May and I moved out the sixth of June.

Q. Now, you had a station wagon, is that right?

A. That is right.

Q. Was Mr. Zipkin driving that car during the thirty days or so that you lived at the apartment?

A. No, sir. The only time he drove it was when he went with me to help move the furniture because it was pulling a trailer and I am not used to driving with a trailer.

Q. What I mean is, was he driving that car other than just on that occasion?

A. No, sir.

Q. Did you turn it over to him or let him use it?

A. No, sir.

Q. And then from the apartment, in June you moved out to the farm?

A. That is right.

Q. And is there just one dwelling house on this farm or several?

A. There is a large house, a small house and three log cabins.

Q. How many people live at the farm?

A. Right now, only me and my five children. When I moved out there, there was a couple with three children in the tenant house.

[fol. 72] Q. Anyone else living there now?

A. No.

Q. Did Mr. Zipkin ever live there?

A. No, sir.

Q. And then you have remained out there since you moved there?

A. That is right.

Q. And the three people in the tenant house left?

A. That is right.

Q. Has anyone else moved in out there?

A. No, sir.

Q. And how about Mr. Zipkin using the car, the station wagon, after you moved out on the farm? Did he use it then?

A. No, sir. Not that I know of.

Q. Well you had—

A. Well, there might have been occasions when he was going for something for the farm. Dr. Freeman drives it occasionally when he wants to do some hauling, if he needs it. It is possible Mr. Zipkin did too, I don't recall.

Mr. Seiler: That is all.

By Mr. Croft:

Q. I believe you said that you moved from the apartment out to the farm where you now live on June the sixth?

A. Yes, that is correct.

Q. Did you and Mr. Zipkin go out to take this inventory before or after you moved out on the farm?

[fol. 73] A. I don't really remember, I think it was before. I don't recall the exact date.

Q. After the first time that you and Mr. Zipkin went out to the farm to get the furniture, did Mr. Zipkin go back again to get some other pieces of furniture for you?

A. No, sir.

Q. Did Mr. Sapp suggest to you at the time of the inventory that you take Mr. Zipkin?

A. No, sir. He just said take someone with me if I was afraid to go alone, which I told him I was.

Q. During either of the occasions when you and Mr. Zipkin were on the farm, was anything said at that time by Mr. Zipkin about his being either a law student or having studied law?

A. Well, as I told you, he said, "I'm studying to be a lawyer, and therefore, possibly I know more of the law than you do."

Q. Who was present when he said that?

A. My husband and Mr. Grant and myself.

Q. Has Mr. Zipkin done any work for you in connection with your divorce action, by way of interviewing witnesses?

A. No, sir.

Q. Or obtaining testimony?

A. No, sir. Mr. Sapp was my lawyer.

Q. Do you know Mr. Trombley?

A. Yes, sir.

Q. Do you know whether or not Mr. Trombley and Mr. [fol. 74] Zipkin at that time were close friends?

A. It was my understanding that they were close friends, yes, sir.

Q. Do you know whether they still are?

A. I don't think so. No, sir.

Q. And has Mr. Zipkin ever told you why they are not?

A. No, sir.

Q. Have you ever discussed it with him at all?

A. I don't inquire into peoples personal affairs.

Q. I beg your pardon.

A. I said I don't inquire into peoples personal affairs.

Q. Is your answer that Mr. Zipkin has never discussed it with you or told you the reason why he and Mr. Trombley are—

A. (Interrupting) I didn't hear.

Q. Is it your testimony that Mr. Zipkin has never told you why he and Mr. Trombley are no longer on friendly basis?

A. That is correct.

By Mr. Donnelly:

Q. Did I understand your testimony that Mr. Zipkin and you and your husband were friendly and visited together prior to this trouble you had with your husband, is that true?

A. Well, yes. I mean there were others present, but we were.

Q. I understand, but your husband was friendly also with [fol. 75] Mr. Zipkin?

A. Yes, sir.

Q. I believe, you said that Dr. Freeman suggested, that you take Mr. Zipkin with you to your place, your farm, to inventory the property and to move furniture and the like?

A. Well, yes, I told him that Mr. Sapp said to take someone with me, and who would he suggest. I didn't want to go alone. He said Mr. Zipkin would probably go.

Q. How do you account for the fact then, that there was such a violent outburst on the part of Mr. Grant, I believe his name is, when Mr. Zipkin showed up there with you to assist you in those chores, if your husband was there and was friendly previously to Mr. Zipkin?

A. I don't know. But he told me when he came to visit me and the family, he repeatedly told me, "I don't know what it is about him, but I can't stand Michael Zipkin."

Q. When he came where?

A. When he called on me at the farm. He repeatedly told me that night, "I don't know what it is, but I don't like Mr. Zipkin. I can't stand him."

Q. Who was saying this?

A. Grant.

Q. What about your husband, as I understand it he was in an argument with Mr. Zipkin also at that time. Did he just all of a sudden have a falling out with him?

A. I don't understand what you're saying.

[fol. 76] Q. As I understand it, your husband and Mr.

Grant ordered Mr. Zipkin off of the place when he first saw him—

A. (Interrupting) This is the first time, I mean—

Q. (Interrupting) Do I understand your testimony to be that your husband and Mr. Zipkin were friendly prior to that time?

A. Yes.

Q. I'm trying to find out, if I may, what caused this violent outburst when he came out to the place with you.

A. I suppose, naturally, my moving out. That is all I can see.

Q. Did he exhibit any violence or the like toward you or was it solely directed to Mr. Zipkin on that particular occasion?

A. Solely to Mr. Zipkin.

Q. He didn't try to keep you from taking your property or doing what you wanted, he merely ordered Mr. Zipkin off the place?

A. He ordered him off of the place and asked him not to come into the house.

Q. That is the first time that he had a falling out with Mr. Zipkin?

A. As far as I know, yes, sir.

Q. From that time, how long ago, previous to this, was it that Mr. Zipkin visited in your home?

A. Oh, I just can't remember. I do remember an occasion when he and Dr. Freeman were out at the farm, they came and picked up something after the birth of my last [fol. 77] baby. That must have been sometime after April.

Q. A matter of several months?

A. From April to May and June.

Q. I see. Now, you stated that Mr. Zipkin came to the farm to help Dr. Freeman with some of the chores, was this before or after you moved to the farm?

A. Well, it was both before and after I moved to the farm.

Q. Was it before or after Mr. Zipkin graduated from the law school?

A. Before and after, I think.

Q. Now, did I understand your testimony to be that both Mr. Trombley and Mr. Zipkin and yourself were patients of Dr. Freeman?

A. Yes, sir.

Q. You do not know whether or not Mr. Zipkin is still a patient of Dr. Freeman?

A. No, sir, I do not.

Q. You are still under Dr. Freeman's care?

A. No, sir.

Mr. Donaelly: No further questions.

Mr. Wagner: I have no further questions.

Mr. McQuie: I have one or two questions.

By Mr. McQuie:

Q. Mrs. Baurichter, were you a witness at the Dr. Freeman hearing before the State Board of Healing Arts?

A. Yes, sir.

Q. And who was Dr. Freeman's attorney on that occasion?

[fol. 78] A. Mr. Carl Sapp.

Q. Did you discuss your testimony with Mr. Sapp prior to your appearance there as a witness?

A. Did I?

Q. Yes, ma'am.

A. I suppose so.

Q. Did you discuss your proposed testimony with Mr. Zipkin prior to your appearance there as a witness?

A. Why, no, sir. Mr. Zipkin was not my lawyer, Mr. Sapp was my lawyer.

Q. Did you discuss the case at all with Mr. Zipkin prior to the hearing?

A. As I say, I'm only a casual acquaintance of Mr. Zipkin. We don't discuss much when he is around. I suppose I probably had overheard him and Dr. Freeman discussing his case.

Q. How many times would you say you have seen Mr. Zipkin during your acquaintanceship?

A. How many times, sir?

Q. Yes.

A. That is hard to say. We used to roller skate. I think that was once a week, possibly once a week.

Q. Did you feel that your separation from your husband was a rather important event in your life?

A. Well, certainly.

Q. One that perhaps was a rather personal type of thing as far as your feelings and so forth went. It was something [fol. 79] personal to you, is that correct?

A. I don't understand what you're trying to say.

Q. What I'm getting at is—I'm not trying to argue at all—but here is a man you say is a casual acquaintance and you're separated from your husband and you lean on him, more or less.

A. Who says I lean on Mr. Zipkin?

Q. You took him out to move some furniture. You were born and raised here in Boone County?

A. That is true.

Q. Did you have any friends in Boone County?

A. I don't think I have many.

Q. Do you have some close friends you have associated with?

A. I thought I had a few, but they don't seem to be around anymore.

Q. In other words, you have no friends?

A. Oh, certainly I have friends. Well, I asked Mr. Grant to help me and he made it quite clear that he didn't want to help me.

Q. You have never discussed the Freeman hearing with Mr. Zipkin at all, is that your testimony?

A. Well, as I say in a group, possibly, but other than that—

Q. (Interrupting) But you never discussed it, just the two of you in conversation?

A. No.

[fol. 80] Q. Have you ever heard Mr. Zipkin discuss the Freeman hearing with any other person that may have been a witness or might have given testimony?

A. No, sir.

Mr. McQuie: That is all the questions I have.

Mr. Wagner: No further questions.

Mr. Croft: That is all.

(Witness excused.)

[fol. 81] Reporter's Certificate (omitted in printing).

[fol. 82] MICHAEL J. TROMBLEY, of lawful age, being produced, sworn and examined by the Board of Law Examiners, deposeth and saith:

Examination by Mr. McQuie:

Q. Will you state your name and address?

A. Michael Trombley. I live at 1103 South Glenwood, Columbia, Missouri.

Q. How old a man are you, Mr. Trombley?

A. Twenty-six. I will be twenty-seven in December.

Q. What is your profession?

A. I am an Attorney at Law.

Q. Where do you practice?

A. Here in Columbia.

Q. And where and when did you receive your law degree?

A. In February of 1960 at the University of Missouri.

Q. Are you acquainted with Michael Zipkin?

A. Yes, I am.

Q. Would you state when you first became acquainted with him?

A. I first met him in our freshman year, which was 1957. I became better acquainted with him in our junior year.

Q. Now, would you state the nature of your acquaintanceship with Michael Zipkin? Was it social or was it business?

A. Social. It was social as a student.

Q. Would you say that you were a close friend of Michael Zipkin's?

A. Perhaps at one time. I don't know exactly what you call close. We were on friendly terms.

[fol. 83] Q. Do you or have you in the past employed a woman by the name of Irene Weirhake?

A. Yes, she is our housekeeper.

Q. Would you state how old a woman she is?

A. I believe Irene is thirty-five.

Q. How long has she been employed by you?

A. Since last November.

Q. Now, does she live in your home?

A. Yes, in a basement apartment.

Q. Has she lived there since November, 1959?

A. Yes.

Q. Would you state the background of your employment of her, the reasons for it?

A. Well, we knew Irene Weirhake slightly since we arrived in Columbia. She was divorced from her husband in the fall of 1959. Had a baby after her divorce and she was living at a Miss Pace's home. Miss Pace sold her home and we heard Irene had no place to go with a small child on her hands. My wife had been interested in having a housekeeper live in and we approached her.

Q. Do you know whether or not she is or has been associated with a Dr. Freeman?

A. Yes, she has been a patient of his.

Q. Do you know for how long she was a patient of Dr. Freeman?

A. On and off for over a year, I believe, at least.

[fol. 84] Q. Do you know that Dr. Freeman was called for a hearing before the State Board of Healing Arts in the summer of 1960?

A. Yes.

Q. Do you know when that hearing was?

A. I believe it was in June or May, May or June.

Q. Do you recall receiving a phone call from Michael Zipkin preceding that hearing?

A. Yes, I do.

Q. Where was that call made—where were you when the call was received?

A. At home.

Q. And who was the call to, if you know?

A. I don't know who it was to. My wife answered on one phone and I answered on the other about a minute later. Everyone was speaking. I don't know who it was to.

Q. Did Mr. Zipkin identify himself over the phone to you?

A. Well, by saying this is Mike Zipkin, no, he didn't but I recognized his voice.

Q. I'll ask if there is any doubt or question in your mind that that was Michael Zipkin that you talked to over the phone on that occasion?

A. No doubt whatsoever.

Q. Now, would you relate the substance of the conversation for the Board please?

A. Sir, Mr. Zipkin was talking to my wife when I picked up the receiver. He mentioned the fact that he was helping Dr. Freeman with his case and that things were looking well, that there had been some new material, or something [fol. 85] new had come up but there was a problem in that Irene, I mean Mrs. Weirhake, was in a truth telling mood and that he felt that my wife and I should meet with he and Dr. Freeman to see what could be done about Mrs. Weirhake.

Q. Now, was there any further conversation other than that?

A. Well, I think at this time I interjected and my wife had been doing all the talking. I said, "Are you trying to intimidate a witness? What is going on?" He said, "I think it would be better for everybody all the way around if we met and decided what to do with Mrs. Weirhake."

Q. Did he state to you on this occasion that he represented Dr. Freeman?

A. Just that he was working with Dr. Freeman on his case.

Q. Did he hang up the phone at the time you quit listening?

A. No, I think I hung up and then shortly thereafter, in in the space of seconds, my wife hung up. I don't know who hung up first.

Q. Did you, after that,—have you, after that, had any other conversations either in person or by phone with Michael Zipkin?

A. I think one week—oh, the first part of September I saw him cross the street. He said hello and I said hello. That was all.

Q. Have you had any conversations with reference to Dr. Freeman's hearing since that one phone conversation that you have testified to?

A. With Mr. Zipkin?

[fol. 86] Q. With Mr. Zipkin, yes.

A. No.

Q. Now, am I correct in assuming that you are not friendly now with Mr. Zipkin as you once were?

A. We haven't associated. I hold no animosity.

Q. Could you state the reason that you have not associated together as you once did?

A. Well, primarily over this Dr. Freeman deal. At one time my wife and I were in association with him—

Q. (Interrupting) By him you mean—

A. (Interrupting) Dr. Freeman. And we found, or the situation came up where a lot of things were being questioned. He was acting in a questionable manner and so forth. At which time we broke off relationship with Dr. Freeman. Mr. Zipkin came over to the house, oh, twice after that time. I talked with him and it was told to me things were not right as far as Dr. Freeman goes and it just ended right there.

Q. And am I correct in stating it was nothing that Michael Zipkin, nothing about his character, his actions, that caused this?

A. Nothing whatsoever.

Q. It was more his association with Dr. Freeman?

A. Well, yes. At the time he came over, as I said about twice afterwards, he never came over after that and we have never tried to contact him.

Q. Has he—has Michael Zipkin ever to you or in your [fol. 87] presence made a statement about his association with Dr. Freeman standing him in good stead so far as being a successful attorney after passing the bar?

A. I think, sir, one day when we were talking around the kitchen table—it was a long discussion, two or three hours—he made mention of the fact that there was a possibility that he would be Dr. Freeman's attorney and that he would probably be successful or something with his help along that line.

Q. Did he make any statement with reference to it through representing Dr. Freeman and having access to confidential information in regard to his patients and such as that?

A. No, I think he said something to the effect that Dr. Freeman had stuff on other lawyers. To what extent this was I don't know but this was probably, I think—how did he put that—something that Dr. Freeman had information or had knowledge of certain things on certain lawyers which

might be used for help, or something. I can't quote verbatim. This was way back in April or March.

Mr. Croft: Of what year?

The Witness: This year, 1960. It was one of the two times he came over to our house after the turn of the year.

Mr. McQuie: I believe that is all the questions I have [fol. 88] at this time.

By Mr. Donnelly:

Q. Mr. Trombley, was there any clear mention of Mr. Zipkin working with Dr. Freeman on this particular hearing or matters that came up in May or June of 1960?

A. Well, not from Mr. Zipkin. I had heard rumors but I don't think—

Q. (Interrupting) Now, by working with Dr. Freeman did he, or was that explained to you in any manner by Mr. Zipkin?

A. No, he just made a statement "I am working with Dr. Freeman on his pending case, the case before the Medical Board."

Q. There was no further explanation?

A. No, I am working with Dr. Freeman.

Q. I am referring not only to the phone conversation that you had when your wife was also on one of the phones but these other conversations that you had with Mr. Zipkin?

A. No, I think he mentioned at one time that he might be Dr. Freeman's attorney, as I already mentioned. He said that he was working with him on the hearing at the time. At that time I don't think we even knew there was to be a hearing.

Q. Now, this matter of being Dr. Freeman's attorney, was that in reference to the future or was that with reference to the present?

A. Oh, I think he meant it as to the future because at [fol. 89] the time he was a law student. There was no hearing it was just a comment.

By Mr. Oliver:

Q. Mr. Trombley, I understand Mr. Zipkin did not call you on the phone, the phone call about which you testified

to. You picked up the phone and he was already talking. Is that correct?

A. Yes. Well, the phone rang. We have three phones in my house. My wife answered it. I was in the bathroom and picked up the bedroom receiver.

Q. In other words, you answered it within a short period of time?

A. Oh yes, a matter of seconds.

Q. What in particular did you hear that caused you to suggest that Mr. Zipkin was attempting to intimidate a witness?

A. Well, the part that I heard was the fact that he said Irene was in a truth telling mood and that we ought to get together to decide what to do. There is a little background to this situation.

Q. What I am trying to find out is, why just hearing that part of the phone conversation you had jumped to the conclusion that this was an attempt to intimidate a witness?

A. Well, the reason is simply this, at this time Mrs. Weirhake was still under treatment from Dr. Freeman. When she was informed that she was to appear against him she [fol. 90] asked what she should do, whether the attorneys were going to question her. I said tell the truth. She went to Dr. Freeman and told him that she was going to be called and that she was going to tell the truth. At which time he said that this would not be wise that—this is what she tells me—this would not be wise. That something would happen to her whereby she would probably be kicked out of our house. Her reputation ruined in the community and a lot of derogatory things would happen to her. She came home to tell me and my wife of this and shortly thereafter, within a matter of a couple of days, Mr. Zipkin's call comes in and he says Irene is apparently in a truth telling mood. This might not be good and we wish to talk to you and your wife about what to do with Irene. Therefore, I sort of maybe jumped to conclusions but you take the preceding incident that I discussed, that Irene had told me about, and connected it with this incident.

Q. What I am trying to find out is how in walking from the bathroom to pick up the phone—how long did you listen before you broke into the conversation?

A. Well, I listened, if I remember correctly it was the first of his calls. They were talking about, oh something there was going to be a hearing and this and that and then Mr. Zipkin said, "I am working with Dr. Freeman on this [fol. 91] hearing. There have been new developments. Things look good for Dr. Freeman but there is one trouble." —or something to that effect—"Irene is in a truth telling mood and we would like to meet with you. Dr. Freeman and I would like to meet with you and your wife and discuss what to do about this, or with her."

Q. And you tied this in with what someone else had told you and you assumed—

A. (Interrupting) What Mrs. Weirhake had told me, yes.

Q. Would it be a fair statement, Mr. Trombley, that if you had not had this other information from other people you probably would not have jumped to the conclusion that you have stated?

A. Well, I don't know whether I would have used that terminology. In fact, I am not real sure whether I did but I know I said something to that effect. But it seems strange to me for a person to say that a witness in a hearing is in a truth telling mood and something should have to be done about it. I think this would have stuck in my craw regardless of whether I had prior knowledge or not.

By Mr. Donnelly:

Q. While we are talking about this woman, Irene, do you know of your own knowledge whether Mr. Zipkin approached her personally?

A. Not to my knowledge, no. I have no knowledge of that.

[fol. 92] By Mr. Oliver:

Q. You have no knowledge that he had talked to her prior to the conversation you had?

A. Mr. Zipkin?

Q. Yes.

A. No, I have no knowledge of anything done before or after that time, no.

Q. You don't know whether he ever has?

A. I have seen him talk to her.

Q. Of your own knowledge?
A. Of my own knowledge?
Q. Yes.
A. No, except for seeing them talk.

Mr. McQuie: He said he had seen them talking.
Mr. Oliver: I beg your pardon.
Mr. McQuie: He said—I said he said he had seen them talk.

By Mr. McQuie:

Q. By that you mean on some prior occasion, socially or something?
A. Oh, yes. A year or two years prior to that.

Mr. Croft: Mr. Wagner.

By Mr. Wagner:

Q. You and your wife at one time were patients of Dr. Freeman?
A. That is right.
Q. Does he practice any particular phase of medicine or surgery?
A. Yes, he is a psychiatrist.
Q. Have you ever heard or has Mr. Zipkin ever repre- [fol. 93] sented himself in your presence as an attorney?
A. No. We were law students together.
Q. Would you say his reputation in a community for veracity and morality was good or bad?
A. In this community?
Q. Yes.
A. I hear it both ways.
Q. I want your opinion.
A. You want my opinion of his veracity?
Q. And morality?
A. As far as his general reputation in the community?
Q. Yes.
A. Well, I hear that—I just don't rightly know how to answer that because I hear it both ways. If you want my personal opinion—
Q. (Interrupting) I want your personal opinion.
A. On it?

Q. Yes.

A. I don't think it is particularly good.

Q. And when did you make up your mind to that?

A. Oh, after our talks in the last few months of our association.

Q. When did you first make up your mind that his reputation was not good?

A. Why, I can't give you a date.

Q. Oh, approximately. 1958, 1959, 1960?

A. Well, 1960.

[fol. 94] Q. How about 1959?

A. I have no opinion.

Q. You didn't have any opinion in 1959?

A. No.

Q. Now, you were a character witness for Mr. Zipkin in his divorce case, were you not?

A. Yes, I believe so.

Q. Were you not asked by his attorney if you had any opinion as to his reputation in the community for veracity and morality?

A. I believe I was.

Q. And what was your answer to that question?

A. At that time, good.

Q. Now, that was in 1959?

A. Yes.

Q. And you are telling the Board that you didn't know about his good reputation at that time yet you testified in the divorce case that he did have a good reputation?

A. That was my opinion, yes, at that time.

Q. Now, your opinion is based on hearsay about this time that his reputation is not good?

A. Yes. General reputation, yes. That is hearsay.

Q. Were you partly responsible for these proceedings being lodged against Mr. Zipkin?

A. No, I don't believe so.

Q. You had no part in it whatsoever?

A. The only part that I know of is that when the Freeman hearing—well, preceding the Freeman hearing Mr. Alexander, who is the attorney for the Medical Board, came over to my office and he knew that I was generally [fol. 95] gratuitously representing two of the witnesses and

he asked me—he said he had heard that there were lots of things going on and if anything was done in relation to those witnesses would I inform him of such. I did on this phone call, as I did on other things.

Q. Didn't you and Mr. Baurichter and Mr. Grant and Mr. Vanlaningham have a meeting and discuss a possible charge being lodged?

A. Most certainly I did not.

Q. At no time?

A. No.

Q. And how did you report this alleged phone conversation to the Board?

A. How did I report it to this Board?

Q. Yes.

A. I reported to Mr. Alexander and then next I met this gentleman here (indicating) who asked me about it and I told him—no, after that some local attorneys in Columbia called me up and they were investigating Michael Zipkin and wanted to take a statement from me and my wife about the phone call.

Q. Who was that?

A. Mr. Phil Grimes and Robert Smith.

Q. Did they tell you who they were representing?

A. I believe they were on the Bar Disciplinary Committee.

Q. I see. Now, who was this Mr. Alexander?

A. He is the senior partner in the firm of Alexander, Oliver and Whalen here in Columbia.

[fol. 96] Q. Now, did he represent the Board in the Freeman hearing?

A. He was at the trial.

Q. He was the prosecutor, sort of the prosecuting attorney?

A. Well, yes. He was the attorney for the hearing, yes.

Q. Now, you and Mr. Zipkin were very close friends at one time, were you not?

A. Not very close. We were close friends. We talked a lot, did things together.

Q. You met at Dr. Freeman's home?

A. Yes.

Q. With Mr. and Mrs. Baurichter?

A. Yes.

Q. You and your wife?

A. Yes.

Q. Do you know of a letter this Irene mailed to Dr. Freeman in which you exonerated him from any charges insofar as she was concerned?

A. No, I don't know about it.

Q. Are you telling us the truth when you say that you hold no animosity against Mr. Zipkin?

A. Yes, I am telling the truth. He has angered me but so has my closest friends and family.

Q. He has more than angered you, hasn't he?

A. No.

Q. He hasn't?

A. No.

Mr. Wagner: I think that is all.

Mr. McQuie: Let me ask one or two other questions.

[fol. 97] By Mr. McQuie:

Q. Mr. Trombley, I believe you testified that Mr. Alexander asked you to inform him in regard to any contact made with the witnesses that you are representing? Is that correct?

A. Yes. Just general contact in relation to this.

Q. I believe you testified that you related to him the incident of the phone call and other things?

A. Yes.

Q. What are those other things? Do they involve Mr. Zipkin?

A. No, they do not.

Q. Neither directly or indirectly?

A. Not to my knowledge, no.

Q. Now, I think perhaps just in fairness to you I should ask this. Did Mr. Alexander contact you? Is that correct?

A. Oh yes, sir.

Q. I mean you didn't go to him and offer anything against Michael Zipkin?

A. Well, I informed him of this but this was only one of a series of things that he had asked me to do.

Q. What I am getting at is the initial contact.

A. Oh, I didn't run over and say I have something on Michael Zipkin.

Q. So Mr. Grimes and Mr. Smith, they contacted you rather than you going to them?

A. Yes, sir.

[fol. 98] Mr. McQuie: That is all the questions I have.

By Mr. Wagner:

Q. Did Alexander ever tell you that he knew you had information in regard Mr. Zipkin?

A. He didn't ask me. He didn't know any information about Mr. Zipkin.

Q. He did contact you?

A. He contacted me. He said he knew I was representing two witnesses in the Freeman hearing. He asked me that if anything was done in relation to these witnesses that I know of, would I please tell him about it. Many things were done. This is the only one, and the only one that I know of, with Mr. Zipkin, is the phone conversation, that is the one mentioned. Many other things were mentioned at times when I met with him and discussed with him.

Q. Isn't it a fact that you are prejudiced against Mr. Zipkin because of his close association with Dr. Freeman?

A. No, I don't think I am particularly prejudiced for that, no.

Q. Would you say you were not or you were prejudiced?

A. Well, this is a matter of degree. I am slightly prejudiced against Dr. Freeman but I don't think association by him and Mr. Zipkin brings out a true prejudice. So I would tend to answer that no, not prejudiced.

By Mr. Oliver:

[fol. 99] Q. Did you report anything other than the phone conversation that you testified about?

A. About Mr. Zipkin?

Q. Mr. Zipkin to Mr. Alexander?

A. Not to my knowledge on any instance and—no, because this is the only one I know of.

Q. Did you make any report about Mr. Zipkin to anybody else on your phone conversation which you testified about?

A. I don't know. Not to my knowledge. I don't know. I don't think so.

Q. Are there any other circumstances that you have not told the Board about other than what you have testified to here today upon which you would predicate your opinion of Mr. Zipkin's reputation not being good?

A. Well, my—no, I have had associations with Mr. Zipkin fairly close from 1958 up until the beginning of 1960, which then dwindled away. Many minor incidents happened in that time. I don't think that they could be definitely made a part of my determination as to his reputation. This phone call and the discussions just prior to his lack of association are the basic things.

By Mr. Croft:

Q. You mentioned that you represented a couple of witnesses before the Freeman hearing. Was this housekeeper of yours one of those witnesses?

A. Yes, sir.

[fol. 100] Q. (Continuing) —that was a client of yours.

A. Yes. Well, she asked me, she was very confused, she asked me if I would help and it was certainly gratuitous. I received no fee.

Mr. Croft: Are there any other questions from anyone?

Mr. Wagner: No further questions.

Mr. McQuie: Do you want him excused?

Mr. Oliver: Do you want him back?

Mr. Croft: You may be excused, sir. Thank you.

(Witness excused.)

[fol. 101] MICHAEL G. ZIPKIN, of lawful age, being produced, sworn and examined by the Board of Law Examiners, deposeth and saith:

By Mr. Wagner:

Q. State your name to the Board, please?
A. Michael Gerald Zipkin.
Q. Where do you live, Mr. Zipkin?
A. 709 East 70th Street Terrace, Kansas City, Missouri.
Q. With whom do you reside at that address?
A. I beg your pardon?
Q. With whom do you reside?
A. My mother.
Q. And stepfather?
A. And stepfather.
Q. How old are you?
A. Twenty-five.
Q. Where were you born?
A. New York City.
Q. And your mother and father were divorced when you were rather young?
A. Age two.
Q. Two? Where did you attend elementary school?
A. I went to Woodland Grade School in Kansas City and I attended Southwest High School in Kansas City.
Q. And then Missouri University?
A. I came to the university in 1953.
Q. And you graduated when?
A. In June of 1960.
Q. You were married at one time?
A. Yes, I was married in August of 1957.
Q. And you were divorced from your wife?
[fol. 102] A. In July of 1959.
Q. When did you become a patient of Dr. Freeman's?
A. I was introduced to Dr. Freeman by Mr. and Mrs. Trombley, who were close friends of his at that time, in either December, I think it was December of 1958.
Q. You then shortly thereafter became a patient of his?
A. Yes.
Q. Why was it you went to Dr. Freeman?

A. Well, I was having marital difficulties with my wife and I was having a peculiarly difficult time in school. I wanted to study but I couldn't seem to concentrate and I had this fear of flunking out of the school.

Q. Did you go to a marriage counselor before you went to Dr. Freeman?

A. No, no. I went to Dr. Freeman. That is, one of the reasons was for marriage counseling, originally.

Q. What was the nature of your marital troubles?

A. My wife was seeing other men and having sexual intercourse with them.

Q. And was a child born?

A. Yes.

Q. Out of wedlock?

A. Yes, my wife was going with a grocery store owner here in town. I came home one night and she told me she was pregnant by him.

Q. Was that the grounds for your divorce, adultery and infidelity?

[fol. 103] A. No, it wasn't. I alleged intolerable indignities.

Q. Now, Mr. Trombley testified as a character witness at your divorce trial?

A. Yes, he did.

Q. And did he testify that your reputation in the community for veracity and morality was good?

A. Yes.

Q. Were you and Mr. Trombley close friends?

A. Looking back, I'll say that Mr. Trombley at that time was the closest friend I ever had.

Q. Do you know what precipitated the rift between you and Mr. Trombley?

A. Yes, I think I do. Of course, I can't examine his mind. I don't know what happened to him but he developed an almost fanatical hatred for Dr. Freeman and he tried to tell me what a bad person Dr. Freeman was and at first I listened to him for a while and then I began to see there was something the matter with Trombley and they just got mad at me because I was seeing Dr. Freeman.

Q. You have heard the testimony of Professor Anderson in regard to the wildness of Michael Trombley?

A. Yes.

Q. Can you enlarge on that wildness on some instance?

A. Mr. Trombley told me—we were talking about why we were going to Dr. Freeman. We had become close friends so we could discuss individual problems. Mr. Trom- [fol. 104] bley told me he was a psychopath. Michael Trombley told me he was a psychopath and I was a neurotic. That is why we got along good together. He said, "Because you are a good neurotic and I am a good psychopath." —something of that nature. I asked him why he went. He was telling me about his terrible temper. And Michael Trombley's outstanding characteristic is—what I know of him—is a very terrible temper. I remember one instance in his home when he was playing with his son, Peter, about two or three years old, and Peter was on his father's shoulders, on Michael's shoulders, while Mike was sitting in a chair and the little boy happened to kick his ear with his foot and Mr. Trombley reached up and grabbed him and threw him on the floor and ran into Mrs. Trombley and —I didn't see him in the kitchen—I was staying in the living room and he was screaming about his ear, about how it was her job to take care of the children. Mrs. Trombley broke down and wept. That was shortly after I met Mr. Trombley. That was when I became aware of his pretty bad temper. Also, he told me that he has had sensations, talking about the wildness. He is a very heavy drinker and when he drinks he becomes very mean and nasty. I was a good enough friend just recently to take a trip to Mrs. Trombley's home in Trenton, Missouri. That is her father's home. His name is Ted Simmons. And while at the home, [fol. 105] it was Mrs. Trombley's people, her, her father and me, we went to visit someone, I guess that's when Mike began drinking. He was a little wild when he drank. He became sullen, a little vicious and mean. I think when Mr. Anderson talks about wildness this is what he means. He has a tendency to climb upon a chair and scream an obscenity when he is drinking or when he gets mad. He has a tendency to become violent.

Q. You were present when Mr. Trombley testified to the phone conversation you had?

A. Yes, I was.

Q. Will you kindly tell the Board the gist of that conversation?

A. Yes. At the time I made that call I was under the impression that Mr. and Mrs. Trombley were still my friends. I think Mr. Trombley said he hadn't seen me prior to that time but he took the bar this last February and I was at his home cheering him up. I was cheering him up telling him he was smart enough to pass it, so on and so forth. So, at that time we were still pretty good friends and I was a guest over there even though they were no longer seeing Dr. Freeman. I saw no reason not to see them just because they weren't patients of his any more. But, oh well, anyway I called him on the phone because I had heard this Mrs. Weirhake was going to accuse Dr. Freeman of rape or sexual immorality. At that time I knew Dr. Freeman was going to have a hearing but I [fol. 106] didn't know who the witnesses were going to be, or anything, and as a—what I consider to be a friendly gesture—I called up the Trombley home. I did it because I had been told that Irene Weirhake had gone loco and all of a sudden decided to accuse Dr. Freeman of rape or sexual immorality, whatever it was, and I called him up to inform them of this. Mrs. Trombley answered the phone. I said, "This is Mike Zipkin." She said, "Yes." And within a period of, I don't know, two or three minutes, not that long, seconds, I heard the extension or somebody clinking the telephone. I said, "And I just heard Irene Weirhake is going to accuse Dr. Freeman of rape and I wanted to tell you about this because if Irene gets into a mess she is just liable to drag you into it. She lives with you and your being expatients of Dr. Freeman I thought you ought to know about it. If she gets into a messy situation you and Mike might be dragged into it." Well, I just barely got the words out of my mouth when Mrs. Trombley screamed over the phone, "Listen, Zipkin, you can't scare us and don't you ever try to frighten us." And just about that same instance he said, "Let me talk a while. Dr. Freeman is going to lose his license, practice and his money and his property and his home and he is going to be driven out of Columbia. He is going to be run out and you are

[fol. 107] involved because you are trying to intimidate a witness." And I said, "This is Mike Zipkin. I'm not trying to intimidate you and Mike or Irene or anyone. All I wanted to do is tell you. If you want to call tomorrow and talk to me or Dr. Freeman, or talk to somebody, about what the information is about I'll tell you what I know." The difficulty with the conversation was that not only had Trombleys known that Irene was going to testify but I understand they were instrumental in getting her to testify. Irene Weirhake was not housekeeping in the Trombley home and I suspect she is not their housekeeper now. And Mike Trombleys were such good friends with Dr. Freeman that when Dr. Freeman had the problem of what to do with this Irene—I think she came from Fulton and she was sick and Freeman told me that he didn't know where she could live while receiving treatment because she was a charity patient. And Mr. Trombley said, "We have room down stairs and I helped Mr. Trombley move Irene Weirhake from the place she was formerly living and I worked all day long to move her into that home. There was just nothing regarding any kind of intimidation. I wouldn't do a thing like that.

Q. Now, directing your attention to the first visit at the farm of Mr. and Mrs. Baurichter, how did Mrs. Baurichter approach you before you went on that trip?

[fol. 108] A. I was trying to remember where she came to me. I guess at a roller skating party, or one of the social gatherings, and we just casually met and she said, "Mike, I am leaving my husband.", prior to a separation agreement. I said, "That is what I heard." She said, "Dr. Freeman thought since I needed help moving the heavy furniture you might go out to the farm with me and help me put some of the heavy pieces in the trailer. I don't know how to hook up a trailer. I have never driven with one." I felt sorry for her, a woman with five children with an unhappy home life, and I went with her.

Q. Tell the Board just what transpired on that occasion?

A. Well, we drove up to the doorway and Mrs. Baurichter got out of the car to go to the door and open it, or see if it was open, and I saw James Earl Grant and L. D. Baurichter coming from the barn, which is immediately

east of the house. I guess a hundred yards or so. So, I stood by the car to greet them. I was on pretty friendly terms with Mr. Baurichter. I had seen that farm hand of his out there. I didn't anticipate any trouble and Mr. Baurichter run up to me and said, "You dirty rotten son of a bitch. You hooked nose Jew. You get your ass off this property or we'll throw you off." I said, "L. D., you don't have any quarrel against me. All I did was come out here with your wife to move furniture she said was too [fol. 109] heavy for her to lift. I didn't think you would object." He said, "I know he is trying to rob me. My wife from me and all our money." I said, "L. D., that's not true. I don't think that's true because there is a separation agreement here and I thought that your parting was on a friendlier basis than it is." He said, "Well, don't go into the house. I don't want you in my house. A man's house is his castle." I said, "I don't want in the house. I just wonder if you and James Earl would go in and move it out and I'll wait out here." He said, "You better get off of here. I am going in and call the Sheriff." And L. D. —James Earl Grant said, "Why do we have to call the Sheriff?" He said, "Let's pick him up and throw his ass off." James Earl, I don't know if you know it, he is a pretty good sized fellow and strong as a horse, I guess. In an attempt to quiet him down I said, "James Earl, you will get in just as much trouble as you say you think I'll be in here. Just relax and go help him move the furniture or whatever you want to do. I'll be on my way." So they said, "All right", and they went into the house and I set up some of those pads in the trailer and they put the furniture in and I drove off.

Q. Now, how soon after that occasion did you go out there again?

A. Well, I think between those two occasions I saw Mr. Baurichter in Dr. Freeman's office. He seemed pretty [fol. 110] apologetic and friendly and shortly after that time Mrs. Baurichter again came to me and she said, "Mike, my attorney, Carl Sapp, is concerned about the property on the farm and he advised me to go out and take an inventory but I told him I was afraid to go out by myself. He said to take somebody along. She said is it all right

to take Mike Zipkin along? He said that will be all right." So, she asked me. I asked her if her attorney said it was all right for me to go. She said, "Yes. He requested that somebody go with me." So, we went out to the Baurichter farm, marched around pastures and fences. She counted machinery and things like that and wrote down on pieces of paper.

Q. Just tell what transpired on that occasion?

A. Well, I was again accosted by James Earl Grant and L. D. Baurichter. They walked up and L. D. said, "What do you guys think you are doing?" I said, "Well, Mrs. Baurichter's attorney, Carl Sapp, asked us to come out and take an inventory of the cattle and how many head of cattle or sheep or pigs, or whatever it was, and I was just out here with her." I didn't want to tell him because she was afraid to be by herself. We were at that time standing by a tool shed near the barn and James Earl Grant folded up his arms and walked up to me and pushed me by just the whole general portion of his body against [fol. 111] the tool shed out there and he said, "Listen, I am tired of you opening up your mouth. I am going to beat the shit out of you", or "kick the shit out of you." I said, "Listen, James, you got nothing to be mad at me about." He said, "Listen, I told you to shut up or I'll hit you in the mouth." Then I think Baurichter said, "Look, Ada Margaret, you deserted me and when a wife deserts her husband the law says everything she leaves behind belongs to the husband and you have no right to come out here and take an inventory, or no right to be out here." Well, I was afraid James Earl was going to clobber me and maybe Ada Margaret and I tried to quiet him down again. I said something to the effect like, "I know this law a little better than you do." And I think I said—I didn't talk to James Earl, I don't think he has the intelligence to understand —I talked to L. D. and I said, "I know a little bit more about this law than you do, L. D., and if her attorney has advised her to do it, it's all right for her to be out here. She is not going to hurt anything and neither am I. Why don't you let us get done." Well, James Earl was getting a little more violent. I thought for sure he was going to

slug me. I said, "Ada Margaret, please call the Sheriff." So she did. Then the Sheriff came out to the farm.

Q. Did you ever tell Grant and Baurichter that you were [fol. 112] a lawyer?

A. No, I didn't tell them I was a lawyer.

Q. Did you ever use the word lawyer?

A. No, sir.

Q. Did you ever say that you were going to be a lawyer, that you were studying law?

A. I think I said I was studying law, something to that effect. No, no. As a matter of fact, I said, "I know more about this law than you do."

Q. But you're positive that you never told Grant and Baurichter that you were a lawyer?

A. Well, it would be foolish.

Q. All I want to know is, yes or no. Did you ever make that statement?

A. No. They knew I was a law student.

Q. Did you ever tell Mike Trombley that when you were admitted to the bar that you and Dr. Freeman had conspired to use certain medical records of law students that had been treated or examined by Dr. Freeman?

A. No.

Q. You are certain about that?

A. Positive. I wouldn't tell him a thing like that.

Q. Did you at any time on any occasion ever represent yourself to be a lawyer?

A. No.

Q. Did you feel that when you made this phone conver- [fol. 113] sation that you intended to intimidate anyone?

A. I never intimidated anybody in my life.

Q. How many trips did you take out to the Baurichter farm?

A. Two, to the best of my knowledge.

Q. The first time when you moved the furniture and when you took the inventory?

A. The first time we moved the furniture and then the inventory. I don't recall any other time.

Mr. Croft: Would you like to examine?

By Mr. Donnelly:

Q. I may have misunderstood you. I understand you were married in 1946?

A. Oh no, 1957.

(Thereupon a discussion was had off the record.)

By Mr. Donnelly:

Q. Mr. Zipkin, what account do you give of the fact of this violent outburst, the time you went out to help move the furniture when you had been on friendly terms with these people?

A. Well, as I said, Mr. Baurichter stated to me after I said, "L. D., you have no quarrel against me." "It's not you. I know I have no quarrel against you. It's that son of a bitch, Freeman." It was antagonism against Freeman.

Q. What again were the exact words you used in advising Mr. Grant that he ought not to pick a fight with you and throw you off the place?

A. I think the exact words were, "I wouldn't pick me [fol. 114] up and throw me off and kick me in the ass if I were you, James, because you will probably get in as much trouble as you think I'll get in by staying."

Q. This was the first furniture acquiring trip?

A. Yes.

Q. Now, down to the inventory taking trip, what were the exact words used by you in referring to the law or lawyers, as the case may be?

A. Well, Mr. Baurichter said to Ada Margaret, "Now listen, you have deserted me and the law says when a wife deserts a husband she has no right to the property and no rights to come back out here and you have no right to be here." And I said, "I think I know a little more about the law on this than you."

Q. Did you go any farther than that?

A. No, sir.

Q. Did you tell him you were in law school?

A. No, sir.

Q. Do you know whether or not he knew it?

A. Oh, of course, he knew it.

Q. Now, what was the date of this occurrence? Was it before or after you graduated?

A. It was before graduation but I can't recall the exact date.

Q. Now, referring back to the phone conversation you [fol. 115] had with the Trombleys, I believe you said something to the effect that this Irene woman is going to testify against Dr. Freeman and you folks may be dragged in to it. Now, what was the purpose of your call? What possible good could you have done in telling them that when they, of course, were as well aware of it as you?

A. Well, in the first place I did not know that they knew about it. I thought it was something on a fresh rumor. Secondly, prior to this time when Mr. and Mrs. Trombley had ceased their relationship professionally with Dr. Freeman they made the statement to me, "You know, Mike, Mike Trombley is going to be a lawyer and we want to set ourselves up in this town and become members of the community and we just can't take a, well, we just can't stand, we won't be able to stand the gossip that is going on about him."

Q. When was that said?

A. This was said in a casual conversation in their home sometime prior—after the split with Freeman but prior to his hearing, I believe. My impression of the Trombleys' split with Dr. Freeman on Mrs. Trombley's part is that she was afraid, she was frightened that being a patient of Dr. Freeman and hearing all the gossip it would reflect on her and her husband.

Q. What did you propose to do with regard to this Irene person?

A. I didn't propose to do anything.

[fol. 116] Q. When you called them up?

A. Nothing.

Q. What were you going to suggest?

A. No, sir. I wasn't going to suggest anything. Irene was really their problem because, as I told them over the telephone, "Irene is going to get herself involved in what looks like a messy situation and I am afraid you guys might get involved in it. I wanted to tell you about it because I am afraid you might get involved in it because

you are expatients of Dr. Freeman," and because my understanding was they were afraid of gossip. They were afraid of rumors because Mike was going to practice here. They were going to set up their home here.

Q. Were the words, "Irene is in a truth telling humor or mood" used in the conversation?

A. Sir, I have never used those words.

Q. Then, of course, you heard Mr. Trombley testify?

A. Yes.

Q. Then when he testified to the effect you said, "Irene is in a truth telling mood and we ought to do something about it" that is just not the truth?

A. Yes, that is not the truth. I did not say that to him.

Q. And you did not say anything that would lead any person to believe the same effect as those words?

A. No, I said nothing to them in any conversation which [fol. 117] had any hint of intimidation toward Irene or anyone else. I merely called them as a friendly gesture to inform them of something that I didn't know they knew because she was living with them and they were expatients of Dr. Freeman. She had told me she was afraid of gossip and I wanted them to know that the woman that was living with her was involved in the Freeman hearing and that they ought to know about it. They, of course, already knew about it and there was no intimidation involved on the phone call. It was a friendly conversation.

Q. Did this Irene person later testify?

A. I beg your pardon?

Q. Did this Irene person later testify in the Freeman hearing?

A. I don't know. I have been told that she did, that she was one of the witnesses.

Q. When was that hearing?

A. May, June, I think some time in there.

Q. Were you in Columbia at that time?

A. Yes, I was.

Q. Do you know if it was held in Columbia?

A. Yes, it was held here. I think at one of the hotels.

Q. Had you graduated at that time?

A. No, I didn't graduate from school until June 10th, or around there sometime.

Q. You were graduated after the hearing?

[fol. 118] A. Yes. See, the finals and the graduation and the bar came in such rapid succession but I did graduate June 10th. Ceremonies were held on the 14th at the Field House.

By Mr. Croft:

Q. Mr. Zipkin, had Dr. Freeman told you that Irene was going to tell this story of rape and immoral relations, or whatever it was she was going to tell?

A. No, I can't recall—I can't recall where I heard it.

Q. Let's give a little thought to it. Did you discuss it with Dr. Freeman at all?

A. Yes, I told Dr. Freeman they must be mistaken. There must be some mistake because Irene wouldn't do such a thing as that.

Q. Then you did discuss with Dr. Freeman the fact or not? It was your understanding that, or his understanding, Irene was going to tell this kind of story. Is that right?

A. Well, no, not exactly, Mr. Croft.

Q. Tell me what the facts are.

A. I did discuss with Dr. Freeman the fact that Irene Weirhake was going to testify but as to what the charges were I didn't know. I still don't know. I don't know what she testified to, rape or whatever it was. He didn't discuss much of this with me.

Q. Did you tell him that you understood that she was going to testify about rape or immorality or did he tell you [fol. 119] that?

A. I think the only thing he told me that was about her is that she was going to testify in the hearing against him.

Q. Then he got the information from someone else that she was going to testify along these lines?

A. I think so. I think I heard it first from someone else.

Q. Then you talked with Dr. Freeman about it?

A. Yes.

Q. Did you talk with Dr. Freeman about your proposed call to the Trombleys?

A. To tell the truth I don't know if he knows about it.

Q. Any question about you discussing it with Dr. Freeman?

A. No, no, I didn't.

Q. Your answer is no?

A. No.

Q. Did you discuss with anyone your intention of calling the Trombleys?

A. No. No one was present when I made the call.

Q. No, before you made the call did you discuss, with anyone, making the call?

A. No.

Q. Did you know at that time that Dr. Freeman was represented by Carl Sapp in connection with this hearing?

A. I don't know. Of course, I knew from the beginning he was represented but I didn't know at that time he had a lawyer.

Q. At the time you made the call, did you know there was [fol. 120] going to be a hearing?

A. Yes.

Q. That was public knowledge?

A. Yes.

Q. And about how long before the hearing was it that you made this call?

A. I'll venture a guess and say a month.

Q. Did you talk with any other person who was a witness at that hearing prior to the hearing about their testimony?

A. No.

Q. Did you ever talk with this Irene person herself about this testimony?

A. I have never spoken to Irene about anything connected with the Freeman matter.

Q. Then this call that you made to Trombleys was the only activity in regard to any potential testimony to be made at this hearing?

A. It wasn't in regard—yes, it was the only contact I made regarding it.

Q. Did you discuss with Dr. Freeman, after you made the call, the fact that you had made it?

A. No.

Q. You never told him about that ever?

A. No. It was too trivial. I marked it off as a mistake on my part.

Q. I am correct, am I not, that Mr. Trombley did tell you in the course of that phone conversation that he regarded what you were doing as an attempt to intimidate his witness?

A. That is what he said. Those are his words. "Now [fol. 121] you are involved with Dr. Freeman because you are trying to intimidate a witness." I told him he was out of his mind.

Q. Did you invite the Trombleys or either of them to talk with Dr. Freeman about the testimony to be given by Irene?

A. I think almost exactly what I said to the Trombleys was, "Well, if you want to talk about this like sensible people and stop shouting, you can come and talk to me or Dr. Freeman and me, or whatever you want to do, and I'll tell you all I know about what I have heard."

Q. Well, no. As I understand what you told me a moment ago Dr. Freeman didn't know about the testimony that Irene was supposed to give. That was the information you had. Is that right?

A. Oh, no. I think Dr. Freeman knew and I think several people must have known and I think I heard it and then I heard it from him. Then I heard it from another person that Irene was going to testify.

Q. Was this before you made the call?

A. Yes, before I made it. I had difficulty believing it because of what I knew about Mrs. Weirhake.

Q. Did you have in mind, in making the call, that the Trombleys should discuss with you and Dr. Freeman this proposed testimony and that thereafter the Trombleys should talk to Irene so that she would not so testify?

[fol. 122] A. No.

Q. What did you have in mind that you expected the Trombleys to do in regard to the testimony?

A. I didn't want them to do anything. I was merely calling them to inform them of the rumor.

Q. Why then did you want them to talk to you or Dr. Freeman about the testimony?

A. Because on the phone with Mr. Trombley on one

extension and Mrs. Trombley on another extension and both of them screaming on the phone at the top of their voices—what the hell, I was trying to tell them if you want to talk to me when we can talk about this nice and calmly—they were both shouting, terribly disturbed—I figured if they wanted to talk to—of course, I figured Dr. Freeman knew about it. I figured they could talk to him about it. It didn't make any difference to me. I tried to make a friendly gesture to them.

Q. It was Mrs. Trombley that first became excited and upset?

A. Very.

Q. I mean it was Mrs. Trombley first rather than Mr. Trombley first?

A. Well, Mrs. Trombley answered the phone.

Q. I understand that. Then during the conversation she was the one that got excited first and started it?

A. Yes, she did and Mr. Trombley came in at the end [fol. 123] with his statement in regard to intimidation.

Q. Did Mrs. Trombley say anything about intimidation?

A. No. I think it was Mr. Trombley. My personal opinion is that it appeared to me after the phone conversation, I thought about it, it was as if they were waiting for me to call them so they could make the charge of intimidation. When I talked to Mrs. Trombley it was only a matter of seconds before the phone went up and Mr. Trombley was on the phone and shot back with this intimidation thing. It was as if they expected to tell me that, as if they were looking for a reason for which to tell me I was intimidating a witness.

Q. If, and I am trying to find out what your purpose was at the time, what was in your mind if the Trombleys said to you, "Oh, Irene is going to testify along this line is she?" and you said, "Yes, that is my information."—and as I understood it you said, "I think you ought to know about this because you are worried about being embarrassed by the gossip." Did you want to tell them about it so they could do something to prevent such testimony and not be embarrassed?

A. No, I didn't want them to do anything. I simply

thought they shouldn't be caught by surprise in something that might involve them.

Q. Just to forewarn them?

A. Yes. To tell them what I knew. I didn't know what they were going to do. I thought they ought to know the [fol. 124] woman was involved in the very thing that he had quit going to Dr. Freeman for. It is my understanding that is why they quit going.

Q. Well then, you had achieved the purpose of forewarning them about it by the call that you made?

A. Well, I don't know if that is right or not. They were so excited and both of them yelling on the phone. I don't think they understood what I was saying. Not only did they probably not hear what I was saying but if they did hear I don't think they understood. That is why I thought a further meeting should be had to make a full explanation, when I said that I was in the process. If they wanted to discuss it and talk calmly to me about it they could. I called to tell them.

Q. Now, in regard to the testimony of Mr. Trombley, that at sometime prior to this phone conversation, and as I understood it, during the spring of 1960 sometime when you were at their house you made statements, the gist of which was that you expected that you would become Dr. Freeman's attorney and that you would be successful because Dr. Freeman knew things about other attorneys that would be helpful to you as his attorney, or words to that effect?

A. Yes, I heard him say that.

Q. Yes. I am stating the substance of what he testified to.

A. Yes.

[fol. 125] Q. Now, do I understand your testimony to be there was never any such conversation of any kind and remotely resembling that?

A. Exactly right. I never said any words to that effect or those exact words at all.

Q. In fact, not the exact words but was there ever any conversation about the possibility that you might someday be Dr. Freeman's attorney?

A. No. The Trombleys knew I was moving to Kansas City after I graduated.

Q. When did you actually move to Kansas City?

A. I took the bar late in June and I think I packed up my stuff and left sometime in July, I think. Well, maybe sooner than that. I had been working there—I don't know. I have been working maybe three months, sometime in July right after the bar.

Q. Have you ever entertained the idea of practicing in Columbia?

A. Yes, I gave it some thought. I lived here, oh seven years. I liked the people here and I thought well it would be nice to practice law here. The only difficulty with that was that I like criminal law and there is not much criminal law practice in a small town like that. The idea was temporary. I discarded it quickly because of the kind of law I liked.

Q. Did you ever make any effort after the phone call to contact either of the Trombleys to try to straighten out [fol. 126] any misapprehensions that he had about the call?

A. No, I didn't. It was as if Mr. Trombley had shown me his true colors. I didn't want anything to do with him after that. I considered him a friend and he accused me of intimidating a witness and that was that.

Q. Did you ever have any discussions with Dr. Freeman about the testimony of any other witnesses or the proposed testimony?

A. (Nodding no.)

Q. Or with Mr. Sapp?

A. No. Neither of those two gentlemen discussed the case with me. I was pretty busy myself. I suppose it wasn't any of my business.

Mr. Croft: That's all.

By Mr. Oliver:

Q. What date do you place on the severance of your close—

A. (Interrupting) I didn't hear you.

Q. What date would you place as the date of the termination of the close friendship with the Trombleys?

A. Close friendship?

Q. Yes.

A. The end of the friendship was sometime in 1959 as best I can tell. I'll tell you why I have difficulty in answering that. There was such a build up over a period of time on the part of the Trombleys against Freeman I can't say what exact date. It was by many adverse contacts and why I should stop being his friend and get away from him [fol. 127] and that sort of thing. It was sometime in 1959.

Q. Did you feel badly about the termination of this friendship?

A. Very much so. In fact, I was very hurt by the phone call because as I say I considered Mike Trombley to be at that time—I have considered him to be the closest friend I ever had. We went together, we were seen together and sat together in the classes. We helped each other during our law examinations. He was a character witness at my divorce. When I moved out of my apartment after finding out my wife was pregnant I called Mike and asked if I could stay at his house that night and later on Trombley was instrumental in getting me a place to live the remaining part of the year at a legal fraternity house, which I wasn't a member of. I considered Mr. and Mrs. Trombley to be very close. Of course, they invited me to Mrs. Trombley's home over the week-end in Trenton. When he separated from Dr. Freeman I did my best to maintain my friendship with both Dr. Freeman and them and gradually it became impossible. Every time I would go over, even to comfort Mike about the bar exam, he would go into a harangue and the phone conversation ended any friendship.

Q. In other words, it is a fair statement of your testimony to say that you were attempting to maintain it and that [fol. 128] you noticed that the friendship was disintegrating. As far as you were concerned you would have like to kept it alive?

A. I would still like to keep it alive but I guess not. I think Mr. Trombley has such an intense hatred for Dr. Freeman he and I would never be able to discuss anything or be friendly.

Q. From whom did you learn of the possible testimony of Irene?

A. Again, I am stumped. I heard it from several people, I think. I am almost positive I heard it from one of the

patients at a roller skating party, or one of the group gatherings, and then I heard it from Dr. Freeman.

Q. Did you hear about the prospective testimony of anyone other than Irene?

A. No. I heard the charges were being brought against Dr. Freeman by some other woman I didn't know of.

Q. Did you hear there were several women involved as far as he was concerned?

A. Yes, I heard several women were involved.

Q. Did you hear the names of any other women in addition to Irene?

A. I heard the name of one of the other patients but I can't recall. A young lady that I had seen casually. I think her name was Joyce something. I don't remember her last name.

Q. But you made no phone calls to anyone about any [fol. 129] other witnesses?

A. No.

Q. Except this one call as far as the Trombleys were concerned?

A. As far as that hearing was concerned I didn't think it was any of my business. It was Dr. Freeman's problem and not mine. I was concerned with practicing law at that time and the most I could give him would be to stick by him, or whatever you want to call it.

Mr. Oliver: That is all.

By Mr. Seiler:

Q. I understood you to tell Mr. Croft a moment ago that Dr. Freeman did not tell you about Irene Weirhake's proposed testimony. Am I mistaken on that?

A. No, no. I did not discuss Mrs. Weirhake or Mrs. Weirhake's testimony with Dr. Freeman prior to making the phone call to the Trombleys. That is what I meant.

Q. Didn't you just tell Mr. Oliver that Dr. Freeman told you Irene was going to testify?

A. Yes.

Q. Well, you mean that he didn't tell you that until after you informed him you had called the Trombleys?

A. No.

Q. Straighten me out?

A. I'll try to explain it the best I can. To my best recollection I heard this rumor. I think it was at some kind [fol. 130] of gathering, social gathering, that Irene Weirhake was going to accuse Dr. Freeman of rape and sexual immorality at this hearing that he was going to have. I called Trombleys and told them what I had heard because I didn't think they knew and then Dr. Freeman told me that Irene was going to testify against him. I said, "Are you sure? I heard just a rumor." He said, "No, I am sure."

Q. And at that time you didn't tell the doctor about your call to the Trombleys?

A. No, I didn't.

Q. And their reaction?

A. No.

Q. Now, Irene Weirhake, as I understand it, is about thirty-five years of age?

A. I don't know.

Q. Well, give me your best judgment. How old a woman? A young woman or what?

A. What?

Q. An old woman?

A. Oh no. Thirty-five, forty, between t[illegible]

Q. All right and you were calling the [illegible]leys, as I understand it, to inform them that Iren[illegible]s going to testify to rape and sexual intercourse alth[illegible]gh I also understood you to say you were confident in your own mind that Irene wouldn't do anything like that?

A. No. I called the Trombleys simply to tell them I heard Irene was going to testify. I didn't know what to.

Q. I thought I understood you to say a little while ago you were confident in your own mind Irene wouldn't do [fol. 131] anything like that?

A. I wasn't confident. I found it difficult to believe.

Q. Well, you knew what it was you were going to say, what you had heard she was going to say?

A. No, I did not hear what Irene was going to say. All I heard was Irene was going to testify against Freeman at his hearing.

Q. You mean when you called the Trombleys you didn't talk to them and say to them and you didn't know what it

was she was going to testify, that it was sexual?

A. No. I called the Trombleys and all I said to them was, "I heard Irene was going to testify against Dr. Freeman at his hearing."

Q. Well, no. Is it true that Irene did have a baby by somebody?

A. Yes. She told me it was her husband's baby.

Q. And this was—when was it she had this baby with relation to this?

A. To my best understanding of it because I didn't watch her too careful for signs of pregnancy, she told me she had gotten pregnant while they were married and gotten a divorce while she was pregnant. I met her husband. I shook hands with her husband.

Q. Did she ever say anything to you and Dr. Freeman, say anything to you about this was his baby?

[fol. 132] A. No, sir.

Q. And are you telling us in your opinion, based on your observations of Irene, that she is feeble minded. Is that what you are saying?

A. I say that she is totally insane.

Q. Well—

A. (Interrupting) Of course, that is a personal opinion.

Q. Based on what? What is there about her to give you that idea?

A. Well, from what I know about Irene, what she has told me, she has been in and out of mental institutions all of her life and that the only reason that she never came under the care of a competent psychiatrist or private doctor patient relationship is she simply didn't have the money and Dr. Freeman took her in as a charity patient. He treated her for nothing and when I first saw Irene in the Trombley home, which was right at the beginning when I met the Trombleys, she looked like somebody had put her through a wash pan and rung her out. Her hair was messed up and when she spoke to me it was most incoherent. When she was talking to you in a conversation she would skip over to what are you going to do this Christmas or some sort of silly thing like that, and I didn't know but Mrs. Trombley told me she was a schizophrenic, which to me means insane. And then any woman who would be a charity

[fol. 133] patient of a psychiatrist treating her and go around and tell people this baby belonged to her husband and then all of a sudden accuse the psychiatrist, who I think has done a great deal for her, apparently. Any woman that would accuse her psychiatrist is nutty.

Mr. Seiler: That is all.

By Mr. McQuie:

Q. Do you recall testifying here in answer to somebody's question that Ann Trombley had told you that she and her husband hoped to settle down here and that he was going to practice law and be members of the community? Do you remember that testimony?

A. Yes.

Q. Do you remember further testifying that knowledge came to you that Irene Weirhake was going to testify that she was involved in some rape and sexual immorality, or something in connection with Dr. Freeman, and inasmuch as you knew that was the exact thing that the Trombleys were afraid of, as you say she told you, this is what she told you—

A. (Interrupting) Let me clarify that a little bit. From what I know about the Trombleys, Mrs. Trombley is extremely wealthy—

Q. (Interrupting) Wait a minute did you testify to that or not?

A. Yes.

Q. Didn't you just get through telling Mr. Seiler that you didn't know what she was going to testify to before you [fol. 134] called Trombley? Which is right, did you or didn't you?

A. Here is what is right. I called up the Trombleys and informed them of exactly what I heard.

Q. What did you hear?

A. That Irene was going to testify against Freeman at his hearing. I didn't hear what about or what the charges were. I had no idea.

Q. You didn't tell in answer to a question over here (indicating) you did know?

A. I know now what she testified. I read it in the newspaper.

Q. Why did you call Trombleys?

A. I called the Trombleys to inform them that the woman who was living with them was going to testify against Dr. Freeman. I thought they ought to know about it.

Q. Why would that make any difference to the Trombleys unless it was specifically against them?

A. You would have to know the Trombleys. I could tell you. These are as high a society people as you can get and anything like that woman going into a hearing and saying yes, I live with Trombleys and yes, I have been raped by a psychiatrist—

Q. That is the thing you didn't know? This rape by the psychiatrist business.

A. That is right I didn't. I didn't know yet.

Q. That is what I am asking you. Why did you call them? You weren't going to be able to tell she had been [fol. 135] raped by a psychiatrist because you didn't know it.

A. Let me put it to you this way. If I had a good friend in Kansas City and I had a police report on a maid, who worked in that home, was going to be put in jail, I would call them and tell them their maid was going to be put in jail. I didn't think they knew about her testifying.

Q. So you told them that she was going to testify?

A. No, that I heard she was going to testify. They were good friends of mine.

Q. Now, do you know a law student, a former law student, by the name of McGuire?

A. Is that Tom McGuire?

Q. Yes. Where does he practice now?

A. I don't know. I haven't seen him.

Q. Was he in your law class?

A. Yes, he graduated with me.

Q. Did you make a statement to him at one time that you had been busy lining up witnesses for the Freeman hearing?

A. No. I never made that statement, nothing to that effect.

Q. How would you characterize your relationship with Dr. Freeman?

A. Well, I was a patient of the doctor, professional.

Q. Socially are you close friends?

A. Well, no, because I hardly see him. I see him on the week-ends occasional. I come down here sometimes to help him on the farm.

Q. Then what explanation do you have for this transfer [fol. 136] of bitterness on the part of L. D. Baurichter against Dr. Freeman to you?

A. I have no explanation for it. It doesn't seem plausible to me.

Q. What explanation do you have for the transference of this feeling of bitterness by any of these witnesses that have testified here towards Dr. Freeman to you?

A. You will have to say that again. On bitterness of Dr. Freeman to me?

Q. That is right. What is the basis for that?

A. I think the sole basis of any bitterness towards me by anyone is because I have remained Dr. Freeman's patient and haven't run away in fear after he had an investigation.

Mr. McQuie: That's all the questions I have.

Mr. Donnelly: I have one other question.

By Mr. Donnelly:

Q. The Trombleys were so bitter against Dr. Freeman. Now, what difference would it make to them that their maid testified against Dr. Freeman? It would seem to me that that would be the very thing that they would be looking for, somebody to give him a bad time at his hearing.

A. I misunderstood their bitterness. I didn't think it was that bitter. I thought that they had simply terminated their relationship with Freeman. I didn't know there was any vicious bitterness until after the phone conversation.

[fol. 137] Mr. Croft: Mr. Wagner?

Mr. Wagner: No further questions.

Mr. Croft: Anybody else? Anything you want to say?

The Witness: No, that's all.

Mr. McQuie: Let me ask one more question.

By Mr. McQuie:

Q. If you had this going out there to Baurichter's over again, would you do it again?

A. I certainly would.

Q. You would go out to help her?

A. You mean if I knew what would happen?

Q. I am talking about right now if you left something out there.

A. I'd say, "I'd see you around and I'd take a long walk somewhere."

Mr. McQuie: That's all.

By Mr. Oliver:

Q. I would like to ask a couple of questions. I understood you—let me get at it this way. I want you to be sure that you understand what your testimony is here as to what you told the Trombleys. I want you to reflect on what you had heard and what you actually told them as to your understanding to what Irene was going to testify to. Now, reflect on that very carefully and tell us your best recol-[fol. 138] lection of how much detail, if any, you went into with the Trombleys in your description of what you had heard Irene was going to testify to?

A. I only told the Trombleys one thing. I only made one statement. I said, "I heard that Irene Weirhake—I heard a rumor that Irene Weirhake was going to testify at this hearing of Dr. Freeman's."

Q. So that I understand your testimony, it is that you did not tell that you had also heard that she was going to testify that she had been raped by Dr. Freeman or words to that effect?

A. No, sir.

Q. And that was the nature of her testimony?

A. I didn't know the nature. I still don't know the nature of her testimony. I wasn't there and I never—from what I read in the newspaper there were three women who claimed rape.

Q. Well, I just wanted to be sure that you reflected on that because I am not quite sure the testimony is consistent all the way through.

(Witness excused.)

[fol. 139] Reporter's Certificate (omitted in printing).

[fol. 140]

IN THE SUPREME COURT OF MISSOURI

To the Supreme Court of Missouri:

No. 17333

In the Matter of the Determination of Good Moral Character of Michael Zipkin, on his Application to Take the Missouri Bar Examination.

RECOMMENDATION OF BOARD OF BAR EXAMINERS—
Filed February 13, 1961

Michael Gerald Zipkin, age 25, of Kansas City, Missouri, a June 1960 graduate of the University of Missouri School of Law, filed his law student registration December 15, 1958, and his bar examination application March 22, 1960. He took the June, 1960, bar examination, but did not pass. There was nothing unusual on the surface in either his law student registration or his bar examination application. The bar committee for the Sixteenth Circuit, in investigating applicant with regard to his law student registration, on February 19, 1959, found that he was of good moral character; and the bar committee for the Thirty-fourth Circuit on May 4, 1960, also found that he was of good moral character, as a result of its investigation with regard to applicant's application to take the bar examination.

While the Board was still in the process of grading the papers of the June 1960, bar examination, Mr. McQuie, on or about July 23, 1960, was informed by a member of the Boone County bar that applicant allegedly had held himself out as an attorney on behalf of one Dr. Freeman, a Columbia, Missouri, psychiatrist, whose license was revoked in a hearing held sometime in June, 1960, before the State Board of Healing Arts for unprofessional conduct, and that Zipkin had attempted to influence the testimony of witnesses in the Freeman hearing.

This was the first intimation the Board had of any question as to Zipkin and promptly upon receiving the above information from Mr. McQuie, Mr. Seiler telephoned Fred Hulse in Sedalia and requested him on behalf of the Board to make an investigation in Columbia.

Under date of August 1, 1960, Mr. Hulse wrote the Board that following his investigation he had "very much doubt [fol. 141] that said applicant is a person possessed of those requisites of good moral character necessary to qualify him to be admitted to the bar of Missouri. I would suggest and urge that your Board of Law Examiners give further consideration to this matter before certifying the applicant as qualified to be issued a license to practice law in Missouri."

Under date of August 18, 1960, Mr. Donnelly, the then president of the Board, wrote Mr. Hulse that the applicant's examination grades would be withheld pending a complete investigation of the matter, which the Board would not be able to hold prior to September 3, 1960, the handdown date, and that if the investigation was unfavorable to the applicant he would be afforded a hearing, on notice, with the right to represented by counsel, subpoena and examine witnesses.

The Board decided to complete the grading of applicant's examination papers, along with the papers of all other applicants and if the applicant should fail the examination, he would be notified that there would have to be a hearing with respect to his good moral character before he could take a second examination.

Mr. Zipkin failed to pass the June, 1960, bar examination and the secretary wrote him by certified mail, return receipt requested, under date of September 12, 1960, informing him that a report had been received from Mr. Hulse which raised the question as to whether he met the character requirements, that therefore if he desired to take a second examination under Rule 8.09 it would be necessary for the Board to investigate further the matter of whether he met the character requirements and asking him to reply promptly as to whether he intended to take the second examination and that if such were his intention that the

Board would proceed with the hearing, giving him due notice.

Under letter dated September 14, 1960, Mr. Zipkin wrote the secretary that he did intend to take a second bar examination in February, 1961, and asking that he be informed [fol. 142] as to the questions raised regarding his character, the facts pertaining to the same, the persons raising said questions and notice as to the time and place of the proposed hearing.

The Board discussed the matter of the time, place and procedure of a hearing in its meeting in St. Louis on September 30, 1960, a copy of the minutes of said meeting already having been furnished the Court.

Under date of October 3, 1960, the secretary wrote Mr. Zipkin that at said meeting the Board voted to hold a hearing on his application to take the bar examination, directed to the question of whether he met the requirement of good moral character, the hearing to be held in an appropriate room at the law school, University of Missouri, Columbia, Missouri, on Friday, October 21, 1960, starting at 1:00 P. M., and that in particular the Board would investigate the matter of whether or not he influenced or attempted to influence a witness or witnesses to misrepresent or withhold facts in connection with the Freeman hearing and also whether or not he held himself out as a member of the bar in connection with certain divorce litigation pending in Boone County, Missouri. The secretary informed Mr. Zipkin that the Board has power under Supreme Court rule to issue subpoenaes and if he desired any subpoenaes, to request same promptly and they would be issued. He was also informed that he was entitled to be represented by counsel if he desired and to present evidence and examine witnesses.

By letter dated October 7, 1960, Mr. Zipkin replied, stating he would be represented by Mr. Louis Wagner, of the Kansas City bar, and asking that he be furnished with the names of the witnesses the Board intended to subpoena in regard to the charges, so that his counsel could properly present evidence and examine witnesses at the hearing.

By letter dated October 11, 1960, the secretary wrote Mr. Zipkin, listing the names of the witnesses which the Board

intended to subpoena, and stating that all of said witnesses [fol. 143] were of Columbia, Missouri.

The hearing was held as scheduled at Columbia, Missouri, at the law school on Friday, October 21, 1960. Mr. Zipkin was present in person and represented by Mr. Louis Wagner. The Board has already furnished the court with a copy of the minutes of said meeting.

Thereafter, the Board requested Mr. Hulse to have the reporter transcribe the testimony of all witnesses. Applicant's attorney, Mr. Wagner, later notified the Board that he did not desire to present any additional evidence on behalf of applicant and Mr. Croft, president of the Board, wrote Mr. Wagner under date of November 1, 1960, that the Board therefore considered the hearing concluded so far as testimony is concerned.

Each member of the Board has had available a copy of the transcript of the testimony of the witnesses. It is the decision of the Board that applicant is not a person of good moral character as required by Rule 8 and that he should not be permitted to take the bar examination. Messrs. Croft, Donnelly, McQuie, and Seiler concur in this decision. Mr. Oliver dissents.

In the opinion of the Board, the two most important witnesses on the factual issue of whether applicant did or did not attempt to influence the testimony of one Irene Weirhake in the Freeman hearing were the applicant himself, and Michael J. Trombley, who testified to a telephone conversation which Zipkin had with Trombley and Mrs. Trombley concerning Irene Weirhake. The transcript of the testimony of said witnesses is attached and the Board believes the following to be the facts, based on its observation of the witnesses and a study of the transcript (the following references in parentheses are to pages in Vol. I of the transcript): that Mr. Trombley, a young attorney at Columbia, in whose household Mrs. Weirhake was acting as housekeeper or maid, was gratuitously acting as adviser to Mrs. Weirhake relative to the questioning which she anticipated at the hearing as to her relations with Dr. Freeman (10, 15).

[fol. 144] That Mrs. Weirhake was still under treatment from Dr. Freeman (9).

That Zipkin and Trombley were friends in law school (2), close friends at one time (16), and Zipkin said he once considered Trombley his closest friend (47). Both Trombley and Mrs. Trombley had once been patients of Dr. Freeman (12). The friendship between Zipkin and Trombley broke up over Dr. Freeman (48), after Trombley and his wife had broken off their relationship with Freeman (23). Apparently this breakup occurred in March or April, 1960 (7, 19), although Zipkin said that the end of the friendship was sometime in 1959 (46, 47), but later said that when he made the telephone call to Mr. and Mrs. Trombley referred to below, which apparently was in the late spring of 1960, he was then under the impression that the Trombleys were still his friends (25), that he had been a guest in their home even though they were no longer seeing Dr. Freeman (25) and that he saw no reason not to see them just because they weren't patients of Freeman any more (25).

That a few days after Trombley had advised Mrs. Weirhake to tell the truth when being questioned by the attorneys as to her relationship with Freeman (10) Zipkin called the Trombleys, saying that he was helping Freeman with his case (4, 10), that there was a problem in that Irene was in a truth telling mood and he felt Trombley and wife should meet with Zipkin and Freeman to see what could be done about Irene (5), that they ought to get together to decide what to do (9, 10, 11); Trombley inquired of Zipkin if he were trying to intimidate the witness, and that Zipkin said he thought it would be better for everybody all the way around if they met and decided what to do with Mrs. Weirhake (5).

Zipkin testified that he understood the Trombleys were instrumental in getting Mrs. Weirhake to testify (27), that they already knew about her being involved in the hearing when he called them (37) [although he also testified that he called them because he didn't think they knew (50)] and that he did call the Trombleys about a month prior to the Freeman hearing and that Trombley said to him that he regarded the call as an attempt to intimidate Mrs. Weirhake (40). Zipkin at first testified that he called the Trom- [fol. 145] bleys because he had heard that Mrs. Weirhake was going to accuse Dr. Freeman of rape or sexual immorality (26), but he later testified that when he called the

Trombleys he did not know what Mrs. Weirhake was going to testify to (50, 51, 54, 58).

Carl Sapp, a member of the Boone County bar, and Dr. Freeman's attorney at the hearing and prior thereto (5),* testified that he did not know whether Zipkin ever interviewed any witnesses or gathered evidence with regard to the Freeman hearing and didn't recall directing him to do so (6), but he later stated that Zipkin played no part in the Freeman hearing (10).

Based on the record of the hearing before the Board, therefore, it is the finding of the Board that applicant Michael Zipkin did attempt to influence the testimony of Irene Weirhake by approaching Mr. and Mrs. Trombley with the suggestions as testified to by Trombley, that applicant Michael Zipkin was not telling the truth in his testimony before the Board with regard to what he said in the telephone conversation to Mr. and Mrs. Trombley and as to whether or not he knew when he telephoned them that Mrs. Weirhake was going to testify as to sexual relations with Freeman.

The Board finds that there was no substantial evidence before it to support the allegation that the applicant had held himself out as an attorney in connection with certain divorce litigation pending in Boone County, Missouri. In this connection, Loren D. Baurichter, a farmer of Boone County, Missouri, and the defendant in said litigation (12) testified that Zipkin came to his home with Baurichter's wife, after the estrangement, to help her inventory some property there (13), and during the conversation between the witness, one James Earl Grant, the witness' wife, and Zipkin (17), Zipkin stated, "I am a lawyer" (14). Nothing by way of amplification of the remark was made (15), and Zipkin did not, according to the witness, state that he was the attorney of the witness' wife (30). The witness further [fol. 146] testified that he thought the statement was "unusual" (25), since although he knew that Zipkin had been

*Note: Except as otherwise specifically noted, all remaining page references are to Vol. II of the transcript of testimony of the hearing of October 21, 1960.

in law school, he didn't know his exact status (16), and didn't know when he was to graduate (22).

Ada Margaret Baurichter, the wife of Loren D. Baurichter, testified that on the occasion mentioned, Zipkin stated, "I am studying to be a lawyer and I possibly know more of the law than you do" (84, 95). She stated that she was positive that at no time did Zipkin say that he was a lawyer (84). This witness further testified that Zipkin had never done anything by way of representing her in her divorce litigation (95) and that he had never discussed the Freeman hearing with her (101), although quite possibly they had been together in a group when it was discussed (100). The applicant corroborates this witness' version of what was said (31, 32).*

James Earl Grant, the hired man at the Loren D. Baurichter farm, testified that Zipkin came on three different occasions to either aid Mrs. Baurichter move or take an inventory of property on the farm (31, 33). The witness testified that on the first two occasions nothing was said by Zipkin about his being a lawyer (32, 33, 39), but that on the last occasion, when they came to take the inventory, and when Loren D. Baurichter, the witness and Ada Margaret Baurichter were also present (37, 47), Zipkin said "I am a lawyer and know a little more about the law than you do" (35, 46). The witness further testified that after the statement was made Loren D. Baurichter left the group, and thereafter Zipkin repeated that he knew more about the law than the witness did but he did not again state that he was a lawyer (38). The witness further stated that Zipkin did not say that he was the lawyer of Ada Margaret Baurichter (35), and the witness knew he had been in law school, but didn't think that he was a lawyer (32, 40). This witness' testimony was partially impeached through prior [fol. 147] inconsistent statements made and which he acknowledged making (51, 52).

Because of the conflict of the testimony on this point and the fact that only this one isolated instance of holding himself out as an attorney is charged, the applicant is not disqualified on these grounds.

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*Note: Referring to Vol. I of the transcript.

All of the witnesses who testified before the Board were personally acquainted with the applicant, for terms ranging from a few months to something more than two years (2, 5, 12, 31, 54, 70, 86). Carl Sapp, Loren D. Baurichter and Dean Joseph Covington did not know the applicant's general reputation for good character (7, 27, 71). Sapp stated that he would sign a character reference for Zipkin, that he always conducted himself as a gentleman so far as he knew (7). Dean Covington stated that he had no personal knowledge of anything prohibiting Zipkin from serving as an attorney (71) and nothing ever came to his attention as Dean while Zipkin was a student, which would reasonably cause the Dean to call Zipkin in for counseling (74). Baurichter regarded Zipkin as a friend (18) and had invited him to his home (27). Ada Margaret Baurichter and Professor Edmond Ralph Anderson, Jr., each testified that the applicant had a good reputation as to general character (61, 63, 66, 87). Michael Trombley testified that the applicant's reputation was not particularly good (13), although he admitted that in 1959 he testified under oath at the applicant's divorce hearing that his reputation was good (14). Even though it might be said that the evidence preponderates in favor of the reputation of the applicant for good character, yet the general reputation would have to yield in deciding this matter, to the specific acts and facts with regard to the telephone conversation above set out, as the determinative factor.

In the opinion of the Board, the testimony of Trombley and Zipkin as to what was said and suggested in the telephone conversation is irreconcilable. It is true that in concluding that Zipkin was not telling the truth about the tele-[fol. 148] phone conversation the Board is believing one witness and disbelieving the other, but this is a problem faced by any fact finding body when there is a dispute of fact between two witnesses on some material point. The Board does not believe that it is necessary to have independent corroboration of Trombley's testimony on this point in arriving at a decision about lack of good morals on the part of Zipkin, particularly in view of the inconsistencies in applicant's own testimony.

It is the decision of the Board that the burden of proof of good moral character has not been satisfied by the applicant, and, based on the evidence before the Board at said hearing, that the applicant is not a person of good moral character so far as being eligible to take the examination to practice law is concerned.

None of the above evidence or any of the charges with respect to applicant was known to the Board at the time Zipkin was permitted to take the June, 1960, bar examinations and the Board does not feel that it is bound by the prior determinations of good moral character made by the Sixteenth Circuit bar committee on February 19, 1959, with respect to his law student registration or by the Thirty-fourth Circuit bar committee on May 4, 1960, with respect to his bar examination application, inasmuch as none of the information set out above was before or considered by either of said circuit bar committees and the information did not reach the Board until on or about August 24, 1960, as stated above.

Respectfully submitted,

Board of Law Examiners, Thomas L. Croft, President, Robert E. Seiler, Secretary, David Donnelly, Member, Walter D. McQuie, Jr., Member.

[fol. 149]

IN THE SUPREME COURT OF MISSOURI

To the Supreme Court of Missouri:

No. 17333

In the Matter of the Determination of Good Moral Character of Michael Zipkin, on his Application to Take the Missouri Bar Examination.

SEPARATE DISSENTING OPINION OF JOHN W. OLIVER*

I cannot join with my colleagues because I do not believe that the evidence in the record as a matter of law, can be said to support the findings of the Board. I dissent because it is my view that any conclusion that Zipkin *in fact* attempted to influence the testimony of Irene Weirhake must rest solely upon the testimony concerning a single telephone conversation. And, not only must one accept Trombley's version of what actually was said in that telephone conversation, he must also accept Trombley's conclusion that what was said did *in fact* constitute an attempt to intimidate a witness.

If the problem was confined merely to a determination of whether Trombley or Zipkin was telling the truth as to what was said in that single telephone conversation, I would not feel bound to dissent from the judgment of my colleagues on that single question, although frankly, I would be bothered about such portions of Trombley's testimony that it made it possible for him to forget that he had offered sworn testimony in support of Zipkin's good reputation as recently as last year (14).

I dissent from the Board's finding that "Michael Zipkin did attempt to influence the testimony of Irene Weirhake by approaching Mr. and Mrs. Trombley with suggestions as testified to by Trombley" (page 6 of Majority Opinion) because I do not believe that the acceptance of Trombley's testimony is sufficient as a matter of law to establish that

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* Note: All page references are to Vol. I of the testimony at the October 21, 1960, hearing.

Zipkin did *in fact* attempt to influence the testimony of Irene Weirhake. It offends my juridical sense of reason to [fol. 150] try to believe that had Zipkin actually wanted to intimidate Irene that he would have selected such an unlikely way to accomplish that purpose.

The supreme law of the land requires, or at least such is my view of it, that "officers of a State cannot exclude an applicant where there is no basis for their finding that he fails to meet . . . permissible standards", as stated in *Schware* v. *Board of Bar Examiners*, 353 U.S. 232. And, as stated in the concurring opinion of that case, "refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the due process clause". I do not believe that there is a sufficient factual basis for a finding that Zipkin is not of good moral character on the theory that the Board accepts Trombley's conclusion that he thought that Zipkin was attempting to influence the testimony of a witness.

Nor do I believe that a finding that accepts Trombley's version of what was said on the telephone is a sufficient basis for a conclusion that Zipkin was "not telling the truth" in the sense that such a finding could be a sufficient legal basis for the conclusion that Zipkin is of bad moral character. The recognized difficulty of determining perjury has caused the law to require proof of at least two credible witnesses or the corroboration by substantial evidence of the testimony of a single witness. See *State* v. *Brinkley*, 189 S.W.2d 314, 335.

Of course the Board is not under duty to prove perjury in this case, but it is my view that under the law the Board is required to base its findings upon substantial evidence. To me, it is indeed a serious business to deny a man the right to take a bar examination on the sole basis of the full acceptance of the word of a single witness who has been but recently a patient of a psychiatrist (12).

This case, in my judgment, involves a much deeper question than who has the burden of proof. Again, I do not rest [fol. 151] my dissent on the idea, that by analogy, the principles recently applied in *Chaunt* v. *United States*, 29 U.S.

Law Week, 4021, decided November 21, 1960, are controlling.

My dissent is based upon my conviction that the evidence in this record does not afford a sufficiently substantial factual basis upon which a finding of lack of good moral character can be predicated. If the burden of proof question is important, then it seems to me that the uncontradicted testimony of Carl Sapp, of the Columbia Bar, of Dean Joe Covington of the University of Missouri Law School, and of Professor Anderson of that school, all of whom testified that in their opinion Zipkin was of good moral character, would at least shift the burden of going forward with the evidence upon the Board. Under any construction of the burden of proof, I simply cannot find this record sufficient to support the conclusion of the Board.

John W. Oliver, Member.

[fol. 152]

BOARD'S EXHIBIT 1

STATE BOARD OF LAW EXAMINERS

STATE OF MISSOURI

JOHN W. OLIVER, PRESIDENT
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JACKSON A. WRIGHT
123 EAST JACKSON STREET
MEXICO, MISSOURI

ROBERT E. SEILER, SECRETARY
FIRST NATIONAL BUILDING
JOPLIN, MISSOURI

September 12, 1960

Certified — Return Receipt

Mr. Michael Zipkin
709 East 70th Street Terrace
Kansas City, Missouri

Re: No. 17333 — Application to take Missouri Bar Examination

Dear Sir:

As you probably know by this time by notification from the clerk of the supreme court, you failed to pass the June, 1960 bar examination.

The Board has received a report from Honorable Fred Hulse, General Chairman of the Missouri Bar Administration, that raises a question as to whether you meet the character requirements for application for admission to the bar.

As you probably know, under Rule 8.09, if an applicant fails to pass the examination, he is permitted to take a second examination within one year without additional cost (assuming, of course, that he is otherwise qualified). Therefore, if you desire to take a second examination in accordance with the above rule, please notify us promptly because

in such event it will be necessary for the Board to investigate further the matter of whether you meet the character requirements.

Therefore, please let us know promptly what you intend to do about taking a second examination and if you state that such is your intention, then the Board will proceed with a hearing and will give you due notice as to the time and place thereof, and of your rights in the matter.

Yours very truly,

/s/ Robert E. Seiler
Robert E. Seiler
Secretary

RES:mt
cc: All Members of the Board
Honorable Marion Spicer

[fol. 153]

Board's Exhibit 2

1014 Argyle Building
Kansas City 6, Missouri
September 14, 1960

Mr. Robert E. Seiler, Secretary
First National Building
Joplin, Missouri

Dear Sir:

I have received your letter of September 12, 1960 regarding the question raised as to my character regarding application for admission to the Bar. This is to notify you that I intend to take a second Bar examination in February.

You will kindly inform me in detail as to the questions raised regarding my character requirements, the facts regarding those questions, and the persons raising those questions, together with notice as to time and place of the hearing you intend to hold.

Yours very truly

Michael Zipkin

MZ:F

[fol. 154]

BOARD'S EXHIBIT 3

COPY

STATE BOARD OF LAW EXAMINERS

STATE OF MISSOURI

October 3, 1960

Mr. Michael Zipkin
709 East 70th Street Terrace
Kansas City, Missouri

Re: No. 17333—Application to take Missouri Bar Examination

Dear Sir:

This will acknowledge receipt of your letter of September 14th.

At a meeting of the Board held in St. Louis on September 30, 1960, the Board voted to hold a hearing on your application to take the Missouri bar examination, directed to the question of whether you meet the requirement of good moral character, said hearing to be held in an appropriate room at the Law School, University of Missouri, Columbia, on Friday, October 21, 1960, starting at 1:00 p.m. This is subject to our being able to get space in the Law School on the above date for said hearing. We expect to know about this soon and I will write you promptly upon our receiving word that there will be a room available in the Law School on the above date.

In particular, the Board will investigate the matter of whether or not you influenced or attempted to influence a witness or witnesses to misrepresent or withhold facts in connection with the hearing recently held in Columbia on Dr. Freeman and also whether not you have held yourself out as a member of the bar in connection with the Baurichter divorce litigation pending in Boone County, Missouri.

The Board has power under the supreme court rules to issue subpoenaes and if you desire subpoenaes for witnesses for the above hearing, please let me know promptly with the names and addresses of the witnesses and we will send you subpoenaes for the same.

[fol. 155] You are entitled to be represented by counsel if you so desire at the above hearing and to present evidence and examine witnesses.

Yours very truly,

ROBERT E. SEILER
Robert E. Seiler
Secretary

RES:mt

cc: All Members of the Board
Honorable Marion Spicer

[fol. 156]

BOARD'S EXHIBIT 4

Kansas City, Missouri
October 7, 1960

Mr. Robert E. Seiler, Sec'y
First National Building
Joplin, Missouri

Re: No. 17335—Application to
take Missouri Bar Examination.

Dear Sir:

This will acknowledge receipt of your letter of October 3, 1960 and will notify you of my intention to be present and represented by Mr. Louis Wagner at your Hearing in Columbia, Missouri on October 21, 1960.

Inasmuch as my moral character is being subjected to investigation regarding the intimidation of witnesses and the holding of myself out to be an attorney, you will kindly send me the names of those witnesses the Board intends to subpoena in regard to those charges. This is necessary information that I must have in order for my counsel to properly present evidence and examine witnesses at the Hearing.

Thanking you for your consideration in this matter, I am

Yours very truly,

Michael Zipkin
1014 Argyle Building
Kansas City, Missouri

MZ:h

[fol. 157]

BOARD'S EXHIBIT 5

Copy

STATE BOARD OF LAW EXAMINERS

STATE OF MISSOURI

October 11, 1960

Mr. Michael Zipkin
1014 Argyle Building
Kansas City, Missouri

Re: 17333—Application to take Missouri Bar Examination.

Dear Sir:

This will acknowledge receipt of your letter of October 7th, wherein you state that you will be present at the hearing in Columbia on October 21st, and will be represented by Mr. Louis Wagner.

In regard to your request for the names of witnesses which the Board intends to subpoena, they are as follows:

Michael J. Trombley,
Carl Sapp,
L. D. Bauriehter,
James Grant,
Dean Joe Covington,
Professor Ed Anderson.

These witnesses are all of Columbia, Missouri.

The hearing will be held in the faculty conference room at the Law School on the date previously stated, Friday, October 21st, starting at 1:00 p.m.

Yours very truly,

Robert E. Seiler
Secretary

RES:mt

cc: All Members of the Board

[fol. 158]

STATE OF MISSOURI

BOARD OF LAW EXAMINERS

(Under authority of Rule 8.09 of the Supreme Court)

Re: Michael Zipkin—
Application No. 17333

SUBPOENA

The State of Missouri, To Michael J. Trombley, Attorney at Law, Columbia, Missouri; Carl Sapp, 502 Guitar Building, Columbia, Missouri; L. D. Baurichter, Columbia, Missouri; James Grant, Columbia, Missouri; Dean Joe E. Covington, School of Law, University of Missouri, Columbia, Missouri; Ed Anderson, Associate Professor of Law, School of Law, Columbia, Missouri.

You Are Hereby Commanded, that setting aside all manner of excuse and delay, you be and appear in proper person before the Board of Law Examiners of the State of Missouri, in the Conference Room, Lee H. Tate Hall, School of Law, University of Missouri, in the City of Columbia, Missouri, on Friday, the 21st day of October, 1960, at 1:00 o'clock p.m., then and there to testify and the truth to speak, in a certain matter or hearing now pending before said Board of Law Examiners relating to the investigation of Michael Zipkin, Application No. 17333, and hereof fail not at your peril.

And the person or officer serving this subpoena is commanded to have the same at the time and place aforesaid, certifying how he executed the same.

Witness my hand as Secretary of said Board of Law Examiners.

Done at Joplin, Missouri, on this 11th day of October, 1960.

Robert E. Seiler, Secretary.

Return

I hereby certify that I served the within Writ in the [fol. 159] County of Boone, and State of Missouri, by reading the same to the within-named persons or by delivering true copies of the same to the within named persons as follows:

On October 13th, 1960, to Michael J. Trombley

On October 13th, 1960, to Carl Sapp[illegible]

On October 13th, 1960, to L. D. Bauriehter

On October 13th, 1960, to James Grant

On October 14th, 1960, to Dean Joe E. Covington

On October 14th, 1960, to Ed Anderson

Glen Powell, Sheriff
Title

Karl Schroer, D.S.

Fee $3.00

[fol. 160] And afterwards on the 7th day of March, 1961 the following motion for judicial review and exceptions to findings of the State Board of Law Examiners was filed and which said motion is in words and figures as follows, to wit:

[fol. 161] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF MISSOURI

No. 17333

In the Matter of the Determination of Good Moral Character of Michael Zipkin, Petitioner.

MOTION FOR JUDICIAL REVIEW AND EXCEPTIONS TO FINDINGS OF STATE BOARD OF LAW EXAMINERS—Filed March 7, 1961

Comes now petitioner and excepts to the findings of the State Board of Law Examiners, and respectfully moves the court to dismiss the proceedings herein for the following reasons:

1. That the Board failed to make separate findings of fact and conclusions of law.
2. That the findings and order are not supported by competent and substantial evidence upon the whole record.
3. That the findings and order of the Board violates the petitioner's constitutional rights in that it denies him due process of law.
4. That the findings and order are arbitrary and capricious.
5. That the order and findings are based upon an unfair hearing.
6. That the order and findings of the Board are the result of bias and prejudice and were prejudged prior to such hearing.

Wherefore, petitioner prays the judgment of the court.

Louis Wagner, Attorney for Petitioner, 206 Argyle Building, Kansas City, Missouri, Ba. 1-7151.

[fol. 162]

IN THE SUPREME COURT OF THE STATE OF MISSOURI

No. .....

In the Matter of the Determination of Good Moral Character of Michael Zipkin, Petitioner.

EXCERPTS FROM SUGGESTIONS IN SUPPORT OF MOTION FOR JUDICIAL REVIEW AND EXCEPTIONS TO FINDINGS OF STATE BOARD OF LAW EXAMINERS

* * * * * * *

[fol. 163]

V.

The Finding of the Board Deprives Petitioner of Due Process Under the Constitution of the United States and the Constitution of Missouri.

Article XIV, Sec. 1, of the Constitution of the United States provides as follows:

> "Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, Section 10, of the Constitution of Missouri, 1945, provides as follows:

> "Section 10. *Due process of law*—That no person shall be deprived of life, liberty or property without due process of law."

* * * * * * *

[fol. 164] (b) *Petitioner has been deprived of the privilege of practicing law without due process in that there is no evidence in the record which rationally justifies a finding that petitioner is morally unfit to take the Missouri Bar Examination.*

The right to practice law is a valuable property right of which petitioner cannot be deprived by an arbitrary act without due process of law. State v. McElhenny (Mo. Sup.) 145 SW 1139, 1142; State v. Robinson (Mo. Sup.) 161 SW 1169, 1172; State v. North (Mo. Sup.) 264 SW 678, 681; Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 77 S. Ct. 752; Konigsberg v. State Bar of California, 353 U.S. 252, 77 S. Ct. 722.

In Konigsberg v. State (supra) the California Committee of Bar Examiners conducted hearings to determine if the petitioner had the good moral character necessary to be admitted to the California Bar. At these hearings petitioner presented affirmative evidence of his good moral character in the form of testimonials from various individuals, including a lawyer, and a law professor. However, [fol. 165] a single witness testified that Konigsberg was a Communist in that he had attended Communist Party meetings. There was additional evidence that petitioner wrote newspaper editorials criticizing "big business", political parties, and this country's participation in the Korean war. In addition, petitioner refused to answer questions regarding his suspected connection with the Communist Party. The Committee concluded that he failed to establish his good moral character and he was refused admission to the Bar.

Konigsberg's petition for review was denied by the California Supreme Court, but the United States Supreme Court granted certiorari and reversed the California court, stating l. c. 733:

> "In this case we are compelled to conclude that there is no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character * * *. A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action."

In so deciding the Supreme Court relied heavily on their finding that the specific acts and facts disfavorable to the petitioner were not enough to overcome the strength of the general testimony in favor of his good moral character; that the testimony of the single witness raised only a suspicion that petitioner was a Communist and that this was not enough to raise a substantial doubt as to his good moral character.

In Schware v. Board (supra), the petitioner was refused admission to the New Mexico Bar because it was proven at his hearings that he was an ex-Communist, with a record of aliases, and previous arrests, which facts were held to be conclusive evidence that he was not a person of good moral character. The Supreme Court of New Mexico affirmed the finding but was reversed on appeal by the Supreme Court of the United States, which stated, l. c. 760:

> "In the light of petitioner's forceful showing of good moral character, the evidence upon which the State relies—the arrests for offenses for which petitioner was neither tried nor convicted, the use of an assumed name many years ago, and membership in the Communist Party during the 1930's—cannot be said to raise substantial doubts about his present good moral character. There is no evidence in the record which rationally justifies a finding that Schware was morally unfit to practice law."

The "forceful showing of good moral character" referred to above was, as in the Konigsberg case, in the form of [fol. 166] general testimonials to the effect that petitioner had good moral character.

In both the *Schware* and *Konigsberg* cases the Supreme Court of the United States held, in essence, that the specific facts which were raised and held to cast doubts as to the moral character of the petitioners must give way to the opposing evidence, in the form of testimonials, that the petitioners were men of good moral character. Petitioner herein wishes to strongly emphasize the fact that the finding of the Board in the case at bar diametrically opposes this holding, for the Board specifically held that, "Even

though it might be said that the evidence preponderates in favor of the reputation of the applicant for good character, yet the general reputation would have to yield in deciding this matter, to the specific acts and facts with regard to the telephone conversation above set out as the determinative factor (Findings, p. 8)."

Under the authority of *Schware* and *Konigsberg* (supra) the decision of the Board of Law Examiners, being based on the specific fact of a single telephone conversation as testified to by an uncorroborated, interested, and prejudiced witness (who admitted that in raising the issue of intimidation he "perhaps jumped to conclusions"), as against the overwhelming weight of the evidence strongly supporting the petitioner's good moral character, is arbitrary, capricious and unreasonable, and in violation of petitioner's constitutional rights.

* * * * * * *

[fol. 168]

IN THE SUPREME COURT OF MISSOURI

LD 17333 In re: Michael Zipkin.

ORDER OVERRULING EXCEPTIONS AND AFFIRMING FINDINGS AND ORDER OF THE BOARD—April 10, 1961

Now at this day, the Court having considered the transcript, record and files herein, and the motion for judicial review and exceptions from the findings and orders of the State Board of Law Examiners, finds that the said order is supported by competent and substantial evidence on the whole record. It is therefore considered and adjudged by the court that said exceptions be, and the same are hereby overruled; and the findings and order of the Board of Law Examiners are hereby affirmed.

[fol. 169] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF MISSOURI

No. 17333

In the Matter of the Determination of Good Moral Character of Michael Zipkin, Petitioner.

MOTION FOR REHEARING—Filed April 24, 1961

Comes now petitioner and respectfully moves the court to set aside its decision herein and grant a rehearing of this cause, on the following grounds:

1. Because the court, in affirming the findings and orders of the State Board of Law Examiners that petitioner is not a person of good moral character in that he attempted to influence the testimony of a witness, has overlooked the following relevant, pertinent and uncontradicted facts:

A. That petitioner herein has previously proven his good moral character in full compliance with Supreme Court Rule 8. In 1959 the 16th Circuit Bar Committee investigated petitioner regarding his registration as a law student, and on February 19, 1959, found him to be a person of good moral character. In 1960 the 34th Circuit Bar Committee investigated petitioner regarding his application to take the June, 1960 Bar examination, and on May 4, 1960 it was again found that petitioner was a person of good moral character, and he was accordingly permitted to take the June, 1960 Bar examination.

B. That Petitioner's subsequent hearing before the State Board of Law Examiners on October 21, 1960 had as its general purpose a determination as to whether or not petitioner meets the qualifications under Rule 8 of good moral character; and it was specifically found by the Board in their findings that "the evidence preponderates in favor of the reputation of the applicant for good character".

C. That such men of the highest integrity as Dean Joe Covington and Professor Edmond Andersen of the University of Missouri School of Law, and Carl Sapp of the Mis- [fol. 170] souri Bar, all of whom were called as witnesses by the Board itself, gave testimony that petitioner was a person of good moral character, whose record at the University showed good grades and good background; that in their opinion petitioner qualified under Rule 8 to take the Missouri Bar examination; that they would personally vouch for petitioner's good moral character, and that they had serious doubts that petitioner would ever attempt to influence a witness.

D. That it is uncontradicted in the transcript of the proceedings that petitioner never spoke to the witness he is accused of attempting to influence; that petitioner never made any attempt to personally contact said witness; that said witness took no part in the proceedings and was not even present at petitioner's hearing.

E. That the findings of the Board were based solely on the isolated instance of a single telephone conversation made to Michael Trombley, the attorney for said witness; that the testimony of Trombley regarding the substance of the telephone conversation was biased, prejudiced, inconsistent, impeached and completely uncorroborated, and fully denied by the petitioner.

F. That the decision of the Board was not unanimous but was accompanied by the dissent of John Oliver, a member and past President of the Board. Mr. Oliver was present and took an active part in petitioner's hearing, and based his dissent upon the following grounds:

1. That the finding of the Board is unsupported by the evidence in the record.

2. That the acceptance of the uncorroborated testimony of Trombley as against that of petitioner regarding what was said in a single telephone conversation is not a sufficient legal basis for a finding that petitioner does not have good moral character.

3. That the finding of the Board is, therefore, not based on substantial evidence, and deprives petitioner of due process of law.

[fol. 171] 4. That petitioner's burden of showing good moral character was satisfied by the uncontradicted testimony of Dean Covington and Professor Anderson of the Law School, and Carl Sapp of the Missouri Bar, all of whom testified that petitioner was a person of good moral character.

G. That petitioner has dedicated himself to becoming a member of the legal profession, and has attended the University of Missouri for seven years to achieve this honored goal. Petitioner has never committed any acts of any nature which would in any way reflect adversely upon him, and on those occasions when inquiry has been made, his good moral character has been amply attested to by men of the highest integrity and position within the Missouri Bar.

2. Because in affirming the findings and order of the Board the court has overlooked the following decisions and issues raised therein, duly cited by petitioner in his brief: Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 77 Supreme Court 752 (also cited in the dissenting opinion by Board Member John Oliver), and Konigsberg v. State Bar of California, 353 U.S. 252, 77 Supreme Court 722. In both the Schware and Konigsberg cases the Supreme Court of the United States held that positive and uncontradicted evidence, in the form of testimonials from men of high integrity and repute, that a petitioner has the good moral character required to be admitted to a State Bar, may not be overcome by contradicted and inconclusive evidence of specific acts and facts.

The Court, in affirming the Board's findings has permanently deprived petitioner of taking the Missouri Bar examination, thereby depriving him of due process of law under the authority of the Schware and Konigsberg cases, supra.

Petitioner respectfully submits the above and foregoing facts and authorities as decisive of the case herein, such facts and authorities having been duly submitted by counsel

[fol. 172] for the petitioner in his Motion for Judicial Review and Exceptions to Finding of State Board of Law Examiners.

Wherefore, petitioner respectfully prays that his motion be sustained and a rehearing granted.

Respectfully submitted,

Louis Wagner, Attorney for Petitioner, 206 Argyle Building, Kansas City 6, Missouri, Ba. 1-7151.

Mailed a copy of the within Motion this 21st day of April, 1961, to Thomas L. Croft, President of the Board, 411 North Seventh Street, St. Louis, Missouri.

Louis Wagner

[fol. 173]

IN THE SUPREME COURT OF MISSOURI

ORDER OVERRULING MOTION FOR REHEARING—May 8, 1961

Now at this day the court having seen and fully considered the motion of Michael Zipkin for a rehearing in the above entitled cause, doth order that said motion be, and the same is hereby overruled.

[fol. 174] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 175]

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1961

The petition herein for a writ of certiorari to the Supreme Court of the State of Missouri is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

BRIEF

SUPREME COURT, U.S.
FILED
AUG 5 1961
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961.

No. 288.

IN THE MATTER OF THE DETERMINATION OF GOOD MORAL CHARACTER OF MICHAEL ZIPKIN.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI.

WILLIAM J. BURRELL,
1001 Dwight Building,
Kansas City 5, Missouri,
Attorney for Petitioner.

Of Counsel:

DIETRICH, TYLER, DAVIS,
BURRELL & DICUS,
1001 Dwight Building,
Kansas City 5, Missouri

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas C[illegible], Mo., HArrison 1-3030

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961.

No. .

IN THE MATTER OF THE DETERMINATION OF GOOD MORAL CHARACTER OF MICHAEL ZIPKIN.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI.

Petitioner prays that a writ of certiorari issue to review the decision of the Supreme Court of Missouri issued April 10, 1961, overruling petitioner's exceptions to the findings and order of the State Board of Law Examiners that petitioner is not a person of good moral character and should not be permitted to take the Missouri bar examination.

OPINIONS BELOW.

The order of the court below (Appendix A, *infra*, p. A1) is unreported. The findings and order of the State Board of Law Examiners (Appendix B, *infra*, pp. A2-A15) are unreported.

JURISDICTION.

The court below entered its judgment on April 10, 1961 (Appendix A, *infra*, p. A1). Petitioner's motion for rehearing was overruled on May 8, 1961 (Official Record, p. 260). The jurisdiction of the Court is invoked under 28 U.S.C. 1257.

QUESTION PRESENTED.

Whether, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, there is evidence in the record that rationally justifies the finding of the Missouri Board of Law Examiners that petitioner is not a person of good moral character entitled to take the Missouri bar examination

CONSTITUTIONAL PROVISION INVOLVED.

The Fourteenth Amendment to the Constitution of the United States provides in part as follows:

> "Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT.

I. Background to the Board of Law Examiners' Hearing.

In June of 1960, at the age of twenty-five, petitioner Michael Gerald Zipkin, from Kansas City, Missouri, graduated from the University of Missouri School of Law at Columbia, Boone County, Missouri (Appendix B, p. A2; R-I 21, R-II 77).[1] He had attended the University of Missouri and later the Missouri University Law School since 1953 (R-I 21).

On February 19, 1959, having investigated him with regard to his law student registration filed December 15, 1958, the bar committee for the Missouri Sixteenth Circuit (Kansas City, Jackson County) found that petitioner was of good moral character. And on May 4, 1960, after investigating petitioner with regard to his application to take the Missouri bar examination, the bar committee for the Thirty-fourth Circuit likewise found that petitioner was of good moral character (Appendix B, p. A2).[2] Peti-

---

1. "R-I" refers to Volume I of the transcript of the hearing of the State Board of Law Examiners on October 21, 1960, commencing at page 62 of the official record, and "R-II" refers to Volume II of said transcript beginning at page 124 of the official record. The record numbers cited in this petition are the original page numbers of the volumes of the transcript unless specified otherwise. (It should be noted, as is clearly evident from the two volumes of transcript, that the witnesses whose testimony is reported in Volume II actually testified prior to those whose testimony appears in Volume I.) The Board exhibits cited in this petition are letters which were attached to the opinion of the Board of Law Examiners and appear in the official record at pages 16-22.

2. While the Board of Law Examiners' opinion referred to the Thirty-fourth Circuit (New Madrid and Pemiscot counties), there is apparently no question that this should be the Thirteenth Circuit, consisting of Boone and Callaway Counties, as it seems clear that the character investigation upon petitioner's application to take the Missouri Bar examination was carried on at Columbia in Boone County.

tioner took the June, 1960, Missouri bar examination, but did not pass (Appendix B, p. A4).

While the bar examination papers were being graded, however, a member of the Board of Law Examiners was informed by a Boone County, Missouri, attorney[3] that petitioner allegedly had held himself out as an attorney and had attempted to influence the testimony of a witness at the hearing before the State Board of Healing Arts of one Dr. Freeman, a Columbia, Missouri, psychiatrist. The Freeman hearing was held on June 25, 1960 (R-II 5), and resulted in Dr. Freeman's license being revoked for unprofessional conduct (Appendix B, pp. A2-A3).

An investigation of the charges against petitioner was made at the instance of the Board of Law Examiners, and when petitioner failed the bar examination, he was notified on or about September 13, 1960, that if he desired to take a second examination, it would be necessary for the Board to investigate further the matter of petitioner's character and hold a hearing thereon (Appendix B, p. A4; Board exhibit 1). Petitioner replied that he wanted to take a second bar examination in February, 1961, and asked that he be informed of the questions raised regarding his character, the facts pertaining to and the persons raising the same, and that he be given notice as to the time and place of the hearing (Appendix B, p. A4; Board exhibit 2). The Board thereafter advised petitioner that a hearing would be held on October 21, 1960, at the Missouri Law School, and that the hearing would be particularly directed to the questions of whether petitioner had held himself out as a member of the bar in connection with certain Columbia

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3. The name of the complaining lawyer was never revealed by the Board, notwithstanding the efforts of petitioner and his attorney to find out (see text, *infra*, p. 4; Board exhibit 2; R-II, 3-4).

divorce litigation and whether he had influenced or attempted to influence a witness or witnesses to misrepresent or withhold facts in connection with the Freeman hearing (Appendix B, pp. A4-A5; Board exhibit 3). Petitioner requested and was provided with the names of the witnesses the Board intended to subpoena in regard to the charges, and petitioner was advised that he could present witnesses, request issuance of subpoenas and be represented by counsel (Appendix B, p. A5; Board Exhibits 4 and 5).

II. The Hearing and the Testimony.

The hearing before the Board of Law Examiners was held in Columbia on October 21, 1960, as scheduled. Petitioner was present in person and represented by an attorney. The witnesses who testified were those the Board had advised petitioner it intended to subpoena, plus petitioner himself. All of the witnesses who testified before the Board were personally acquainted with petitioner for terms ranging from a few months to over two years (Appendix B, p. A10).

A. Carl Sapp.

Carl Sapp, a practicing attorney of Columbia, Boone County, Missouri, of approximately twelve years (R-II 4), testified that he had known petitioner for approximately six or seven months (R-II 3); that while he was not acquainted with petitioner's reputation (R-II 7), "his conversation and conduct at the times that I have seen and talked to him have been above reproach and he has conducted himself as a gentleman in my presence" (R-II 7); and that he would sign a character affidavit for petitioner (R-II 7-8). Mr. Sapp also testified that he represented Dr. Freeman in the hearing before the State Board of Healing Arts on June 25, 1960 (R-II 5); that he never em-

ployed petitioner or worked with petitioner in any manner (R-II 6); that he never requested petitioner to interview witnesses or gather evidence in regard to the Freeman hearing (R-II 6, 8); that to his knowledge petitioner never engaged in interviewing witnesses or gathering evidence with regard to Dr. Freeman's hearing (R-II 6); and that petitioner "never played a part in the hearing" (R-II 10).[4]

B. Loren D. Baurichter.

Loren D. Baurichter, the husband of Ada Margaret Baurichter, testified that he had known petitioner probably a year, more or less (R-II 12); that their acquaintance was social and that it has always been on a friendly basis (R-II 12); that he had nothing against petitioner's character and has always had good relationships with his friends (R-II 15); and that he considered petitioner a fairly good friend (R.-II 18).[5]

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4. Mr. Sapp further testified regarding events related to a divorce action filed by his client, Ada Margaret Baurichter, against her husband (R-II 8-11). Mr. Sapp stated that there was "considerable community feeling" in Columbia and Boone County by reason of the Freeman hearing and the Baurichter divorce proceeding (R-II 9-10); that in June of 1960 there were "rumors all over the community" about Dr. Freeman and Ada Margaret Baurichter, "most of which were believed whether there was evidence or not" (R-II 10); that the complaint against Dr. Freeman was made by Mrs. Baurichter's brother (R-II 9); and that the issue of petitioner's character is "very definitely" tied in with the community feeling toward Dr. Freeman and Mrs. Baurichter (R-II 10-11).

5. Mr. Baurichter also testified that he was estranged from his wife and that divorce litigation was pending between them (R-II 12); that petitioner had come out to his home and farm in the early part of May, 1960, when Mrs. Baurichter moved out, to help her move some furniture (R-II 18-19, 22); that petitioner had subsequently come to his home with Mrs. Baurichter when she came to take an inventory (R-II 13-18, 22, 25-27); and that on this latter occasion, petitioner made the statement that "I think I know a little more about it than you do. I am a lawyer." (R-II 14-15).

(Footnote 5 continued on page 7.)

C. Professor Edmond R. Anderson, Jr.

Professor Edmond Ralph Anderson, Jr., of the Missouri Law School testified that he had known petitioner since the spring semester of 1958 (R-II 54); that he knew petitioner as a student and socially (R-II 54, 59), that he thought petitioner met the requirements for admittance to the Missouri Bar (R-II 61); that petitioner was fit to be a member of the Bar (R-II 63); that petitioner's reputation for character and truthfulness was good (R-II 66); that everybody that Professor Anderson knew around Columbia whose judgment he would respect also thought well of petitioner (R-II 65-66); and that in Kansas City former students of Professor Anderson speak well of petitioner (R-II 66).[6]

It was in relation to this latter incident that the Board inquired of Mr. Baurichter and of his hired hand, James Earl Grant (R-II 32-35, 37-40, 50-52), regarding petitioner's alleged statement that he was a lawyer. Petitioner (R-I 31-32, 34; see *infra*, footnote 12) and Mrs. Baurichter (R-II 84-85; see, *infra*, footnote 7) both denied that any such representation was made, but the testimonial conflict became inconsequential because the Board expressly stated in its decision that petitioner was not disqualified on the ground that he held himself out as an attorney. See text, *infra*, p. 17. (The testimony of James Earl Grant (R-II 31-52) only dealt with the attorney-representation issue, and therefore is not discussed.)

6. Professor Anderson further testified that his wife had been a patient of Dr. Freeman (R-II 55); that petitioner and Dr. Freeman were friendly (R-II 55); that petitioner never stated that he was Dr. Freeman's attorney or that he represented Dr. Freeman (R-II 56); that Dr. Freeman's hearing before the State Board of Healing Arts in the summer of 1960 was "Widely publicized and discussed in conversations and by rumors in this area" (R-II 56); that he had heard that perhaps petitioner "was giving some moral support to Dr. Freeman as a friend or as a person who would stand by him" (R-II 56-57); that although he didn't know anything about it, there was among the rumors going around a rumor that perhaps petitioner was interviewing witnesses or gathering evidence in preparation of Dr. Freeman's hearing (R-II 57-58); and that he had "grave doubts that [petitioner] would do anything like that" (R-II 65).

Professor Anderson also testified that one Michael Trombley was one of his students and that his character was good (R-II 67);

D. Dean Joseph Covington.

Dean Joseph Covington of the Missouri Law School testified that he first remembered petitioner as a student in late 1958 or early 1959 (R-II 70); that petitioner had never been in any of his classes and he had known petitioner only in his capacity as Dean (R-II 70); that in regard to the general requirements of character and fitness, he had no knowledge that would prohibit petitioner's serving as an attorney (R-II 70-71); that he was not acquainted with petitioner's reputation among his acquaintances and associates in and about Columbia (R-II 71); and that so far as the law school's records indicated, petitioner had good grades and good background (R-II 80-81).

E. Ada Margaret Baurichter.

Mrs. Ada Margaret Baurichter testified that she had known petitioner approximately a year and a half (R-II 86, 88); that she became acquainted with him when they were both patients of Dr. Freeman (R-II 86-87); that petitioner was "very highly spoken of" (R-II 87); and that she would say his reputation was good (R-II 87).[7]

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that Professor Anderson used to think of the two Michaels together, petitioner and Trombley (R-II 67); that he understood they were both patients of Dr. Freeman (R-II 67); that Trombley came from a more wealthy background and was a kind of high society type (R-II 67-68); that he thought Trombley's relationships with Dr. Freeman's friends were perhaps up and down and that Trombley was perhaps wilder than some of the rest (R-II 68); that he felt petitioner was to be commended in this, petitioner being more conservative and sensible (R-II 68); that Trombley has changed radically and is considerably conservative now (R-II 68-69); and that he had heard that there was a falling out between Trombley and petitioner (R-II 69).

7. Mrs. Baurichter also testified that she was the mother of five children (R-II 82); that she and her husband were separated and that she had brought a divorce action against him (R-II 82); that she moved out of her husband's house on approximately the second or third of May, 1960 (R-II 87); that she couldn't possibly move by herself and she asked petitioner to go

F. Michael J. Trombley.

Michael J. Trombley,[8] a twenty-six year old Columbia, Missouri, attorney who had received his law degree at Missouri University in February, 1960, testified that he first became acquainted with petitioner in their freshman year, 1957 (R-I 2); that he and petitioner were law students together (R-I 13); that they were then on friendly terms, close friends at one time, talked a lot and did things together (R-I 2, 16); that they had been in Dr. Freeman's home along with Mrs. Trombley and the Baurichters (R-I 21); and that they had not associated together as they once did because "Well, primarily over this Dr. Freeman deal" (R-I 6).[9]

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along (R-II 89); that petitioner did so, and drove the car with a trailer and helped her move some furniture (R-II 83, 93); that subsequently she obtained a lawyer, Carl Sapp, and he wanted her to go back and take an inventory of what was left on the farm (R-II 88); that Mr. Sapp suggested she take someone with her when she was reluctant and afraid to go alone (R-II 88, 95); that she told Dr. Freeman that Mr. Sapp said to take someone with her and Dr. Freeman said that petitioner probably would go (R-II 97); that petitioner did accompany her to take inventory some time before the sixth of June, approximately (R-II 88); and that on that occasion petitioner said to Mr. Baurichter and James Earl Grant that "I'm studying to be a lawyer and I possibly know more of the law than you do." (R-II 84, 95).

Mrs. Baurichter also testified that petitioner had never done any work for her in connection with her divorce by way of interviewing witnesses or obtaining testimony (R-II 95); that Carl Sapp was her lawyer (R-II 95); that she was a witness at the Freeman hearing before the State Board of Healing Arts (R-II 99); that she did not discuss her proposed testimony with petitioner before that hearing (R-II 101); that she did not discuss the Freeman case at all with petitioner, except perhaps in a group (R-II 100-101); and that she never heard petitioner discuss the Freeman hearing with any other person that may have been a witness or might have given testimony (R-II 102).

8. As already noted, see footnote 1, *supra*, the testimony reported in R-I was actually given after that reported in R-II. Thus Michael Trombley and petitioner testified after Carl Sapp, Loren D. Baurichter, James Earl Grant, Professor Anderson, Dean Covington and Ada Margaret Baurichter.

9. Trombley explained that he and his wife at one time were patients of Dr. Freeman (R-I 12) and were in association

Trombley testified that he and his wife employed a housekeeper by the name of Irene Weirhake;[10] that Irene had lived in their home, in a basement apartment, since November, 1959; and that she had been a patient of Dr. Freeman on and off for over a year at least (R-I 3). Trombley stated that while Irene was still under treatment from Dr. Freeman, she was informed that she was to appear against him (R-I 10); that she was very confused and asked Trombley what she should do (R-I 9-10, 20); that Trombley told her to tell the truth (R-I 10); that she went to Dr. Freeman and told him she was going to be called and that she was going to tell the truth (R-I 10); that Dr. Freeman told her that this would not be wise (R-I 10); and that "She came home to tell me and my wife of this * * *" (R-I 10).

Trombley testified that shortly thereafter, within a matter of a couple of days, and before the Freeman hearing, a call came in from petitioner (R-I 4, 10); that his wife answered on one phone and he answered in a short period of time on another (R-I 4, 9); and that everyone was speaking (R-I 4). Trombley testified as to the substance of the conversation as follows:

> "A. Sir, Mr. Zipkin was talking to my wife when I picked up the receiver. He mentioned the fact that he was helping Dr. Freeman with his case and that

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with him (R-I 6); that "the situation came up where a lot of things were being questioned. He was acting in a questionable manner and so forth. At which time we broke off relationship with Dr. Freeman" (R-I 6); that petitioner came over to the Trombley house twice after that (R-I 6); that Trombley talked with petitioner about Dr. Freeman and the Trombley-Zipken friendship "just ended right there" (R-I 6); that there was nothing whatsoever about petitioner, about his character or his actions, that caused this (R-I 6); and that it was more petitioner's association with Dr. Freeman (R-I 6).

10. In the testimony transcript, Irene Weirhake's name generally appears incorrectly as "Irene Wierhagen".

things were looking well, that there had been some new material, or something new had come up but there was a problem in that Irene, I mean Mrs. Wierhagen, was in a truth telling mood and that he felt that my wife and I should meet with he and Dr. Freeman to see what could be done about Mrs. Wierhagen.

"Q. Now, was there any further conversation other than that?

"A. Well, I think at this time I interjected and my wife had been doing all the talking. I said, 'Are you trying to intimidate a witness? What is going on?' He said, 'I think it would be better for everybody all the way around if we met and decided what to do with Mrs. Wierhagen.'" (R-I 4-5).

Mr. Trombley testified that he shortly hung up the phone (R-I 5); that thereafter he had no conversations with petitioner with reference to Dr. Freeman (R-I 5-6); and that he had no knowledge that petitioner approached Irene personally, either before the telephone conversation or after (R-I 11-12). In response to a Board member's question as to what in particular Trombley heard over the phone that caused him to suggest that petitioner was attempting to intimidate a witness (R-I 9), Trombley replied that "I sort of maybe jumped to conclusions but you take the preceding incident that I discussed, that Irene had told me about, and connected it with this [telephone] incident" (R-I 10).

When asked by petitioner's attorney regarding petitioner's reputation in the community for veracity and morality, Mr. Trombley stated "I don't think it is particularly good." (R-I 13). Mr. Trombley testified that he made up his mind to this after his talks with petitioner in the last few months of their association (R-I 13, 19); that he first made up his mind in 1960 (R-I 13); and that he didn't have any opinion in 1959 (R-I 14). Upon further questioning, Mr. Trombley stated that he had been a character witness for petitioner in his 1959 divorce case; that he had been

asked then about petitioner's reputation in the community for veracity and morality; and that his answer at that time was "good" (R-I 14).

G. Michael G. Zipkin.

Petitioner Michael Gerald Zipkin testified that he was introduced to Dr. Freeman by the Trombleys, who were close friends of Dr. Freeman at that time, in approximately December of 1958; that he thereafter became a patient of Dr. Freeman; and that he went to him because of his marital difficulties and because of having a difficult time in school, wanting to study but not being able to concentrate (R-I 22). Petitioner stated that at that time Trombley was "the closest friend I ever had" (R-I 23, 47) and "I considered Mr. and Mrs. Trombley to be very close" (R-I 47).[11] As to what precipitated the rift between them, petitioner testified that Trombley developed "an almost fanatical hatred for Dr. Freeman" (R-I 23); that when the Trombleys separated from Dr. Freeman petitioner did his best to maintain his friendship with both Dr. Freeman and the Trombleys and gradually it became impossible (R-I 47); that every time petitioner would go over, even to comfort Trombley after his bar exam, he would go into a harangue about Dr. Freeman (R-I 47); that the Trombleys "just got mad at me because I was seeing Dr. Freeman" (R-I 23); and that "the phone conversation ended any friendship" (R-I 47).

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11. Petitioner stated that he and Trombley sat together in the classes and helped each other during law examinations (R-I 47); that Trombley testified as a character witness at petitioner's divorce hearing (R-I 23, 47); that when petitioner moved out of his apartment before the divorce he called Trombley and asked if he could stay at his house that night (R-I 47); that later on Trombley was instrumental in getting petitioner a place to live the remaining part of the year at a legal fraternity house which petitioner was not a member of (R-I 47); and that the Trombleys invited petitioner to Mrs. Trombley's home over the week-end in Trenton (R-I 47).

When asked to tell the Board the gist of the telephone conversation, petitioner testified as follows:

"A. Yes. At the time I made that call I was under the impression that Mr. and Mrs. Trombley were still my friends. I think Mr. Trombley said he hadn't seen me prior to that time but he took the bar this last February and I was at his home cheering him up. I was cheering him up telling him he was smart enough to pass it, so on and so forth. So, at that time we were still pretty good friends and I was a guest over there even though they were no longer seeing Dr. Freeman. I saw no reason not to see them just because they weren't patients of his any more. But, oh well, anyway I called him on the phone because I had heard this Mrs. Wierhagen was going to accuse Dr. Freeman of rape or sexual immorality. At that time I knew Dr. Freeman was going to have a hearing but I didn't know who the witnesses were going to be, or anything, and as a—what I consider to be a friendly gesture—I called up the Trombley home. I did it because I had been told that Irene Wierhagen had gone loco and all of a sudden decided to accuse Dr. Freeman of rape or sexual immorality, whatever it was, and I called him up to inform them of this. Mrs. Trombley answered the phone. I said, 'This is Mike Zipken.' She said, 'Yes.' And within a period of, I don't know, two or three minutes, not that long, seconds, I heard the extension or somebody clinking the telephone. I said, 'And I just heard Irene Wierhagen is going to accuse Dr. Freeman of rape and I wanted to tell you about this because if Irene gets into a mess she is just liable to drag you into it. She lives with you and your being ex-patients of Dr. Freeman I thought you ought to know about it. If she gets into a messy situation you and Mike might be dragged into it.' Well I just barely got the words out of my mouth when Mrs. Trombley screamed over the phone, 'Listen, Zipken, you can't scare us and don't you ever try to frighten us.' And just about that same instant he said, 'Let me talk a while. Dr. Freeman is going to lose his license,

practice and his money and his property and his home and he is going to be driven out of Columbia. He is going to be run out and you are involved because you are trying to intimidate a witness.' And I said, 'This is Mike Zipken. I'm not trying to intimidate you and Mike or Irene or anyone. All I wanted to do is tell you. If you want to call tomorrow and talk to me or Dr. Freeman, or talk to somebody, about what the information is about I'll tell you what I know.' The difficulty with the conversation was that not only had Trombleys known that Irene was going to testify but I understand they were instrumental in getting her to testify. * * * There was just nothing regarding any kind of intimidation. I wouldn't do a thing like that." (R-I 25-27.)

Later on, when petitioner was questioned again about the telephone conversation, the colloquy proceeded as follows:

"Q. Now, referring back to the phone conversation you had with the Trombleys, I believe you said something to the effect that this Irene woman is going to testify against Dr. Freeman and you folks may be dragged into it. Now, what was the purpose of your call? What possible good could you have done in telling them that when they, of course, were as well aware of it as you?

"A. Well, in the first place I did not know that they knew about it. I thought it was something on a fresh rumor. Secondly, prior to this time when Mr. and Mrs. Trombley had ceased their relationship professionally with Dr. Freeman they made the statement to me, 'You know, Mike, Mike Trombley is going to be a lawyer and we want to set ourselves up in this town and become members of the community and we just can't take a, well, we just can't stand, we won't be able to stand the gossip that is going on about him.'

"Q. When was that said?

"A. This was said in a casual conversation in their home sometime prior—after the split with Freeman

but prior to his hearing, I believe. My impression of the Trombleys' split with Dr. Freeman on Mrs. Trombley's part is that she was afraid, she was frightened that being a patient of Dr. Freeman and hearing all the gossip it would reflect on her and her husband.

"Q. What did you propose to do with regard to this Irene person?

"A. I didn't propose to do anything.

"Q. When you called them up?

"A. Nothing.

"Q. What were you going to suggest?

"A. No, sir. I wasn't going to suggest anything. Irene was really their problem because, as I told them over the telephone, 'Irene is going to get herself involved in what looks like a messy situation and I am afraid you guys might get involved in it. I wanted to tell you about it because I am afraid you might get involved in it because you are ex-patients of Dr. Freeman,' and because my understanding was they were afraid of gossip. They were afraid of rumors because Mike was going to practice here. They were going to set up their home here.

"Q. Were the words, 'Irene is in a truth telling humor or mood' used in the conversation?

"A. Sir, I have never used those words.

"Q. Then, of course, you heard Mr. Trombley testify?

"A. Yes.

"Q. Then when he testified to the effect you said, 'Irene is in a truth telling mood and we ought to do something about it' that is just not the truth?

"A. Yes, that is not the truth. I did not say that to him.

"Q. And you did not say anything that would lead any person to believe the same effect as those words?

"A. No, I said nothing to them in any conversation which had any hint of intimidation toward Irene or anyone else. I merely called them as a friendly gesture to inform them of something that I didn't know

they knew because she was living with them and they were ex-patients of Dr. Freeman. She had told me she was afraid of gossip and I wanted them to know that the woman that was living with her was involved in the Freeman hearing and that they ought to know about it. They, of course, already knew about it and there was no intimidation involved on the phone call. It was a friendly conversation." (R-I 34-37.)

Petitioner further testified that he didn't talk with Dr. Freeman or anyone about making the call to the Trombleys (R-I 39); that he never discussed with Dr. Freeman, after he had made the call, the fact that he had made it (R-I 40); that he never spoke to Irene about anything connected with the Freeman matter (R-I 40); that he never had any discussions with Dr. Freeman about the testimony of any other witnesses (R-I 46); and that he didn't make any phone calls to anyone about any other witnesses (R-I 49).[12]

III. The Decision of the Law Examiners and the Court Below.

On February 13, 1961, the Board of Law Examiners' decision that petitioner was not a person of good moral character and that he should not be permitted to take the bar examination was filed in the Missouri Supreme Court (Official Record, p. 1). Four members of the Board con-

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12. Petitioner was interrogated further about his telephone call to the Trombleys, and he went through the essentials of his testimony about it at least two additional times (R-I 40-44; 49-51).

Petitioner was also questioned about his trips to the Baurichter farm with Mrs. Baurichter and the events thereof (R-I 27-34). Petitioner testified that while at the farm on the inventory trip he said something to the effect of "I know this law a little better than you do" or "I know a little bit more about this law than you do" (R-I 31-32, 34), but petitioner firmly denied that he ever said he was a lawyer (R-I 31-32, 34). As already pointed out, *supra*, footnote 5, the attorney-representation charge was expressly rejected by the Board in its decision. See text, *infra*, p. 17.

curred in the decision, and one member dissented (Appendix B).

The Board expressly stated that petitioner was not disqualified on the alleged ground that he held himself out as an attorney:

> "The Board finds that there was no substantial evidence before it to support the allegation that the applicant had held himself out as an attorney in connection with certain divorce litigation pending in Boone County, Missouri." (Appendix B, p. A8).

The Board reviewed the evidence in this regard and then concluded:

> "Because of the conflict of the testimony on this point and the fact that only this one isolated instance of holding himself out as an attorney is charged, the applicant is not disqualified on these grounds." (Appendix B, p. A10).

On the intimidation charge, however, the Board found against petitioner:

> "Based on the record of the hearing before the Board, therefore, it is the finding of the Board that applicant Michael Zipkin did attempt to influence the testimony of Irene Weirhake by approaching Mr. and Mrs. Trombley with the suggestions as testified to by Trombley, that applicant Michael Zipkin was not telling the truth in his testimony before the Board with regard to what he said in the telephone conversation to Mr. and Mrs. Trombley and as to whether or not he knew when he telephoned them that Mrs. Weirhake was going to testify as to sexual relations with Freeman." (Appendix B, p. A8).

The Board stated that the testimony of Trombley and petitioner regarding the telephone conversation was irreconcilable; that in concluding that petitioner was not telling the truth the Board was believing one witness and disbe-

lieving the other; that it did not believe it was necessary to have independent corroboration of Trombley's testimony on this point, particularly in view of the inconsistencies in petitioner's own testimony; that the burden of proving good moral character had not been satisfied by petitioner; and that the Board did not feel bound by the prior determinations of the Sixteenth and Thirty-fourth[13] Circuit bar committees because the information on which the Board acted had not been before or considered by either of the Circuit bar committees (Appendix B, pp. A11-A12).

The Board summarized the testimony of the witnesses other than petitioner regarding his character and reputation, and commented as follows:

> "Even though it might be said that the evidence preponderates in favor of the reputation of the applicant for good character, yet the general reputation would have to yield in deciding this matter, to the specific acts and facts with regard to the telephone conversation above set out, as the determinative factor." (Appendix B, p. A11).

Board member Oliver dissented. He discussed the constitutional issue; relied on *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, quoting from the concurring opinion in that case to the effect that the "refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or a consideration that offends the dictates of reason offends the due process clause"; and concluded that "the evidence in this record does not afford a sufficiently substantial factual basis upon which a finding of lack of good moral character can be predicated." (Appendix B, p. A14).

Turning to the Missouri Supreme Court, petitioner filed a Motion for Judicial Review and Exceptions to Find-

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13. See footnote 2, *supra*.

ings of State Board of Law Examiners, and Suggestions in support thereof (Official Record, pp. 231-253). Petitioner urged, *inter alia*, that the Board's findings were not supported by competent and substantial evidence upon the whole record, and that the Board's findings and order "violated petitioner's constitutional rights in that it denies him due process of law." (Motion, p. 1; Official Record, p. 231). In his Suggestions in support of the motion, petitioner quoted the Fourteenth Amendment to the United States Constitution, discussed *Schware* and the first *Konigsberg* case,[14] and concluded that under their authority, the decision of the Board of Law Examiners was "arbitrary, capricious and unreasonable, and in violation of petitioner's constitutional rights." (Motion Suggestions, pp. 15, 19-21; Official Record pp. 246, 250-252).

On April 10, 1961, without hearing oral argument, the Missouri Supreme Court entered a summary order overruling petitioner's exceptions and affirming the findings and orders of the Board (Appendix A). On May 8, 1961, petitioner's motion for rehearing was overruled (Official Record, p. 260).

REASONS FOR GRANTING THE WRIT.

1. The conclusion of the Missouri Supreme Court and the Board of Law Examiners from the record that petitioner is not a person of good moral character is contrary to the philosophy of this Court's decisions in *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, and *Konigsberg* v. *State Bar of California*, 353 U.S. 252. Those cases firmly established the constitutional principle that a person cannot be excluded from the practice of law for reasons that

14. *Konigsberg* v. *State Bar of California*, 353 U.S. 252.

contravene the Due Process Clause of the Fourteenth Amendment, and thus that "a person cannot be prevented from practicing except for valid reasons," *Schware* v. *Board of Bar Examiners, supra* at 239, footnote 5, nor can a state bar committee reject an applicant "[w]ithout some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him," *Konigsberg* v. *State Bar of California, supra* at 273. Reversing the unfitness finding in each of the two cases, this Court concluded that "there is no evidence in the record which rationally justifies a finding that [the bar applicant] was morally unfit to practice law." *Schware* v. *Board of Bar Examiners, supra* at 246-247.[15]

In the instant case, the Missouri Board of Law Examiners has made a finding similar to that of the Boards in *Schware* and the first *Konigsberg* case which is similarly without rational justification in the record. The incident which the Board labeled as "the determinative factor" was the "specific acts and facts with regard to the telephone conversation" between petitioner and the Trombleys (Appendix B, p. A11). As "specific acts and facts," the Board found the following:

> "That a few days after Trombley had advised Mrs. Weirhake to tell the truth when being questioned by the attorneys as to her relationship with Freeman (10) Zipkin called the Trombleys, saying that he was help-

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15. In *Schware*, for example, New Mexico had denied Schware the opportunity to qualify for the practice of law with a finding that he was not of good moral character. This Court reviewed the evidence on which this finding was based and held that Schware had been deprived of Fourteenth Amendment due process in that "the evidence upon which the State relies—the arrests for offenses for which petitioner was neither tried nor convicted, the use of an assumed name many years ago, and membership in the Communist Party during the 1930's—cannot be said to raise substantial doubts about his present good moral character." 353 U.S. at 246.

> ing Freeman with his case (4, 10), that there was a problem in that Irene was in a truth telling mood and he felt Trombley and wife should meet with Zipkin and Freeman to see what could be done about Irene (5), that they ought to get together to decide what to do (9, 10, 11); Trombley inquired of Zipkin if he were trying to intimidate the witness, and Zipkin said that he thought it would be better for everybody all the way around if they met and decided what to do with Mrs. Weirhake (5)." (Appendix B, p. A7).

From these facts as found by the Board, the Board reached the astonishing conclusion that "applicant Michael Zipkin did attempt to influence the testimony of Irene Weirhake * * *" (Appendix B, p. A8).

It is uncontroverted in the record that petitioner never talked with Dr. Freeman or anyone about making the telephone call to the Trombleys, that he never even told Dr. Freeman that he made the call after he did so, and that he never at any time talked in person to Irene Weirhake about her testimony or about anything connected with the Freeman hearing (R-I 39-40; and see text, *supra*, p. 16). Trombley himself testified that he had no knowledge that petitioner approached Irene personally, either before the telephone conversation or after (R-I 11-12), and that after the telephone conversation, he had no further conversations with petitioner with reference to Dr. Freeman (R-I 5-6; and see text, *supra*, p. 11). Indeed, Trombley even testified that in suggesting over the telephone to petitioner that he was attempting to intimidate a witness "I sort of maybe jumped to conclusions * * *" (R-I 10). Therefore, for the Board to conclude that petitioner "did attempt to influence the testimony of Irene Weirhake" is without sufficient factual foundation. Board member Oliver effectively dismantled the reasoning of the Board majority in his dissent:

"I cannot join with my colleagues because I do not believe that the evidence in the record as a matter of law, can be said to support the findings of the Board. I dissent because it is my view that any conclusion that Zipkin *in fact* attempted to influence the testimony of Irene Weirhake must rest solely upon the testimony concerning a single telephone conversation. And, not only must one accept Trombley's version of what actually was said in that telephone conversation, he must also accept Trombley's conclusion that what was said did *in fact* constitute an attempt to intimidate a witness.

"If the problem was confined merely to a determination of whether Trombley or Zipkin was telling the truth as to what said in that single telephone conversation, I would not feel bound to dissent from the judgment of my colleagues on that single question, although frankly, I would be bothered about such portions of Trombley's testimony that it made it possible for him to forget that he had offered sworn testimony in support of Zipkin's good reputation as recently as last year (14).

"I dissent from the Board's finding that 'Michael Zipkin did attempt to influence the testimony of Irene Weirhake by approaching Mr. and Mrs. Trombley with suggestions as testified to by Trombley' (page 6 of Majority Opinion) because I do not believe that the acceptance of Trombley's testimony is sufficient as a matter of law to establish that Zipkin did *in fact* attempt to influence the testimony of Irene Weirhake. It offends my juridical sense of reason to try to believe that had Zipkin actually wanted to intimidate Irene that he would have selected such an unlikely way to accomplish that purpose.

"The supreme law of the land requires, or at least such is my view of it, that 'officers of a State cannot exclude an applicant where there is no basis for their finding that he fails to meet . . . permissible stand-

ards', as stated in *Schware v. Board of Bar Examiners*, 353 U.S. 232. And, as stated in the concurring opinion of that case, 'refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the due process clause'. I do not believe that there is a sufficient factual basis for a finding that Zipkin is not of good moral character on the theory that the Board accepts Trombley's conclusion that he thought that Zipkin was attempting to influence the testimony of a witness." (Appendix B, pp. A13-A14).

Petitioner recognizes, of course, that the Board stated that he was "not telling the truth" in his testimony about the telephone conversation to the Trombleys and "as to whether or not he knew when he telephoned them that Mrs. Weirhake was going to testify as to sexual relations with Freeman." (Appendix B, p. A8). But with all due respect to the province of the fact-finder and its ability to believe one witness and disbelieve another, a finding that petitioner was "not telling the truth," at least insofar as it may be a basis for finding a lack of good moral character, must also be rationally justified in the record. Here, there is no such rational justification. There is merely the full acceptance of the testimony of a single witness, Trombley, as against the testimony of petitioner himself. As stated in Board member Oliver's dissent:

> "Nor do I believe that a finding that accepts Trombley's version of what was said on the telephone is a sufficient basis for a conclusion that Zipkin was 'not telling the truth' in the sense that such a finding could be a sufficient legal basis for the conclusion that Zipkin is of bad moral character. The recognized difficulty of determining perjury has caused the law to require proof of at least two credible witnesses or the corroboration by substantial evidence of the testimony

of a single witness. See *State* v. *Brinkley*, 189 S.W.2d 314, 335.[16]

> "Of course, the Board is not under duty to prove perjury in this case, but it is my view that under the law the Board is required to base its findings upon substantial evidence. To me, it is indeed a serious business to deny a man the right to take a bar examination on the sole basis of the full acceptance of the word of a single witness who has been but recently a patient of a psychiatrist (12)." (Appendix B, pp. A14-A15).

Indeed, it defies reason to see how the Board of Law Examiners could conclude in regard to the lawyer-representation charge that

> "Because of the conflict of the testimony on this point and the fact that only this one isolated instance of holding himself out as an attorney is charged, the applicant is not disqualified on these grounds." (Appendix B, p. A10; and see text, *supra*, p. 17)

and not conclude the very same thing as to the intimidation charge. As to the former, Loren D. Baurichter and James Earl Grant testified that petitioner said "I am a lawyer" whereas petitioner and Mrs. Baurichter testified that he did not; as to the latter Trombley testified that petitioner said words such as "I hear that Irene is in a truth-telling mood and let's get together about it," whereas petitioner said he did not. It is contrary to legal logic for the Board to say that petitioner is not disqualified because of the former conflict of testimony, but that he can be disqualified in spite of the latter. And, of course,

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16. In regard to the requirements of Missouri law in proving perjury, *cf.* Mr. Justice Black's statement in his dissenting opinion in the second *Konigsberg* case: "In this situation, it seems to me that Konigsberg has been rejected on a ground that is not supported by any authoritatively declared rule of law for the State of California." *Konigsberg* v. *State Bar of California*, 366 U.S. 36, 58 (dissenting opinion).

petitioner's telephone conversation with the Trombleys is just as much "one isolated instance" as the attorney-representation charge.[17]

The fact that the Board asserts some inconsistencies in petitioner's testimony does not rescue the tenuousness of its "not telling the truth" conclusion. Aside from the fact that the asserted inconsistencies, if existent, are insubstantial and the fact that Trombley himself was inconsistent (see Board member Oliver's comment to this effect, *supra*, p. 24, and see text, *supra*, pp. 11-12), the record demonstrates that the asserted inconsistencies are more illusory than real. For example, in apparent support for its statement that petitioner was not telling the truth "as to whether or not he knew when he telephoned [the Trombleys] that Mrs. Weirhake was going to testify as to sexual relations with Freeman" (Appendix B, p. A8) the Board states that "Zipkin at first testified that he called the Trombleys because he had *heard* that Mrs. Weirhake was going to *accuse* Dr. Freeman of rape or sexual immorality (26), but he later testified that when he called the Trombleys he did not *know* what Mrs. Weirhake was going to *testify* to (50, 51, 54, 58)" (Appendix B, pp. A7-A8). (Emphasis added.) By this latter statement the Board is apparently holding that one who states he has *heard* of an *accusation* to be made at a certain hearing will be making an inconsistent statement if he later says he does not *know* what the accuser's *testimony* will be at the hearing.

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17. Moreover, as pointed out by Board member Oliver, the uncorroborated testimony of witness Trombley is hardly deserving of being taken as the gospel truth. Besides the indisputable fact of human experience that different people remember the same conversation in different ways, the record clearly reflects that Trombley's admitted hostility toward Dr. Freeman along with petitioner's continued association with him resulted in the complete severance of a once-close friendship and in Trombley's animosity toward petitioner.

Such a conclusion is contrary to common knowledge as well as legal reasoning. Certainly there is a difference between hearsay rumor and actual knowledge, and between an accusation and testimony. Thus, there is no real inconsistency here.[18]

In sum, there is no valid basis for the Board's conclusion that petitioner is wanting in good moral character. As stated in the first *Konigsberg* case at the conclusion of the Court's opinion:

> "Without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon

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18. The other two "inconsistencies" which the Board noted are similarly unsupported by the record. The Board stated that "Zipkin said that the end of the friendship [with the Trombleys] was sometime in 1959 (46, 47), but later said that when he made the telephone call to Mr. and Mrs. Trombley referred to below, which apparently was in the late spring of 1960, he was then under the impression that the Trombleys were still his friends (25) * * *" (Appendix B, p. A7). What petitioner actually said, as clearly shown by the record, was that his "*close* friendship" with the Trombleys terminated after their split with Freeman some time in 1959 (R-I 46-47) and that "the phone conversation ended *any* friendship" (R-I 47) (Emphasis added).

The final inconsistency found by the Board is as follows: "Zipkin testified that he understood the Trombleys were instrumental in getting Mrs. Weirhake to testify (27), that they already knew about her being involved in the hearing when he called them (37) [although he also testified that he called them because he didn't think they knew (50)] * * *." (Appendix B, p. A7). (The brackets are the Board's.) What petitioner actually testified to, in trying to describe why the telephone conversation became so heated, was as follows: "The difficulty with the conversation was that not only had Trombleys known that Irene was going to testify but I understand [—not "understood" as stated by the Board—] they were instrumental in getting her to testify." (R-I 27, and see text, *supra*, p. 14). Petitioner subsequently cleared up any possible confusion on the point as follows:

> "Q. * * * Now, what was the purpose of your call? What possible good could you have done in telling them that when they of course, were as well aware of it as you?
>
> "A. Well, in the first place I did not know that they knew about it. I thought it was something of a fresh rumor." (R-I 35; and see text, *supra*, p. 14)

him, it is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law. * * * A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action." *Konigsberg* v. *State Bar of California, supra* at 273-274.[19]

2. From at least *Ex parte Garland*, 4 Wall. 333, through the various lawyer cases last Term, this Court has been continually watchful of the delicate relationships involving attorneys or would-be attorneys, the State and the Constitution.[20] On occasion, the Court has had to remind the State by reversal that in carrying out its bar responsibilities, it must remember that bar applicants and lawyers are citizens and as such are entitled to due process of law. In the instant case, the Court is again confronted with the important question of "whether the balance between the favorable and unfavorable evidence as to [a bar applicant's] qualifications has been struck in accordance

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19. The decisions of the Court last Term, in the second *Konigsberg* case, 366 U.S. 36, and *In re Anastaplo*, 366 U.S. 82, do not detract from the force of *Schware* and the first *Konigsberg* case and their application here. The second *Konigsberg* case and *In re Anastaplo* were "obstruction" decisions, cases where the Court held that it was "not constitutionally impermissible for a State * * * to adopt a rule that an applicant will not be admitted to the practice of law if, and so long as, by refusing to answer material questions, he obstructs a bar examining committee in its proper functions of interrogating and cross-examining him upon his qualifications." *In re Anastaplo, supra* at 88. Clearly there was no obstruction by the applicant in the instant case. As the record demonstrates, petitioner was interrogated and cross-examined at length, and he candidly answered each and every question.

20. That the Court continues to feel that this area deserves attention is shown by *Martin* v. *Walton, Probate Judge*, No. 30, October Term, 1961, involving the validity of the local counsel rules of the Kansas Supreme Court as applied to a Kansas lawyer who also practices in Missouri.

with the requirements of due process." *Konigsberg* v. *State Bar of California*, 366 U.S. 36, 42. Petitioner submits that it clearly has not.

The Board of Law Examiners itself indicated that "the evidence preponderates in favor of the reputation of the applicant for good character * * *." (Appendix B, p. A11). Such an admission was compelled by the testimony of Carl Sapp, Professor Anderson, Dean Covington and Ada Margaret Baurichter. Even Loren D. Baurichter testified that he had nothing against petitioner's character (R-II 15; and see text, *supra*, p. 6), and the most damaging general assessment that witness Trombley could make was that "I don't think it is particularly good," Trombley going on to admit that this conclusion was reached "after our talks in the last few months of our association" (R-I 13; and see text, *supra*, p. 11).[21]

When it comes right down to it, petitioner was a victim of circumstances in a community of aroused feelings against another, and he has been deemed unfit for the bar on the basis of a single, controverted telephone conversation. After devoting seven years in college and law school toward becoming a lawyer, and indeed after he had twice been found worthy of that profession upon regional investigation, petitioner has now been branded "lacking in good moral character" because he made a phone call. Such a finding on such flimsy evidence surely constitutes a violation of due process. Thus the decision below not only flies in the face of *Schware* and the first *Konigsberg* case,

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21. Trombley's evaluation of petitioner's character was also presented after he had first indicated that the breakup of their friendship had "[n]othing whatsoever" to do with petitioner's character or his actions (R-I 6), and of course only the year after Trombley had testified as to petitioner's good character in his 1959 divorce hearing (see text, *supra*, pp. 11-12).

but it also represents a grave injustice which only this Court can remedy.[22]

CONCLUSION.

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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22. It should be noted that this is not the usual "burden of proof" case of a bar applicant. Missouri Supreme Court Rule 8.07 regarding approval of bar applications provides in part that "In no event will permission be granted to register as a law student or to take the bar examination until the investigation as to moral character has been completed." Two such investigations were completed here, and petitioner was twice found to be of good moral character. He accordingly took the bar examination and, upon failing, wanted to take it again when the express complaints of lawyer-representation and witness-intimidation were raised against him. The Board of Law Examiners hearing was obviously more than a general character examination; it was a special inquiry regarding specific charges, not too far removed from a disbarment proceeding.

APPENDIX

APPENDIX A.

ORDER OF THE SUPREME COURT OF MISSOURI

(Entered April 10, 1961).

LD 17333 In re: Michael Zipkin.

Now at this day, the Court having considered the transcript, record and files herein, and the motion for judicial review and exceptions from the findings and orders of the State Board of Law Examiners, finds that the said order is supported by competent and substantial evidence on the whole record. It is therefore considered and adjudged by the court that said exceptions be, and the same are hereby overruled; and the findings and order of the Board of Law Examiners are hereby affirmed.

APPENDIX B

TO THE SUPREME COURT OF MISSOURI:

In the Matter of the Determination of Good Moral Character of Michael Zipkin, on His Application to Take the Missouri Bar Examination.	No. 17333

OPINION OF THE BOARD OF LAW EXAMINERS.

Michael Gerald Zipkin, age 25, of Kansas City, Missouri, a June, 1960, graduate of the University of Missouri School of Law, filed his law student registration December 15, 1958, and his bar examination application March 22, 1960. He took the June, 1960, bar examination, but did not pass. There was nothing unusual on the surface in either his law student registration or his bar examination application. The bar committee for the Sixteenth Circuit, in investigating applicant with regard to his law student registration, on February 19, 1959, found that he was of good moral character; and the bar committee for the Thirty-fourth Circuit on May 4, 1960, also found that he was of good moral character, as a result of its investigation with regard to applicant's application to take the bar examination.

While the Board was still in the process of grading the papers of the June, 1960, bar examination, Mr. McQuie, on or about July 23, 1960, was informed by a member of the Boone County bar that applicant allegedly had held himself out as an attorney on behalf of one Dr. Freeman, a Columbia, Missouri, psychiatrist, whose license was revoked in a hearing held sometime in June, 1960, before the

State Board of Healing Arts for unprofessional conduct, and that Zipkin had attempted to influence the testimony of witnesses in the Freeman hearing.

This was the first intimation the Board had of any question as to Zipkin and promptly upon receiving the above information from Mr. McQuie, Mr. Seiler telephoned Fred Hulse in Sedalia and requested him on behalf of the Board to make an investigation in Columbia.

Under date of August 1, 1960, Mr. Hulse wrote the Board that following his investigation he had "very much doubt that said applicant is a person possessed of those requisites of good moral character necessary to qualify him to be admitted to the bar of Missouri. I would suggest and urge that your Board of Law Examiners give further consideration to this matter before certifying the applicant as qualified to be issued a license to practice law in Missouri."

Under date of August 18, 1960, Mr. Donnelly, the then president of the Board, wrote Mr. Hulse that the applicant's examination grades would be withheld pending a complete investigation of the matter, which the Board would not be able to hold prior to September 3, 1960, the hand-down date, and that if the investigation was unfavorable to the applicant he would be afforded a hearing, on notice, with the right to be represented by counsel, subpoena and examine witnesses.

The Board decided to complete the grading of applicant's examination papers, along with the papers of all other applicants and if the applicant should fail the examination, he would be notified that there would have to be a hearing with respect to his good moral character before he could take a second examination.

Mr. Zipkin failed to pass the June, 1960, bar examination and the secretary wrote him by certified mail, return receipt requested, under date of September 12, 1960, informing him that a report had been received from Mr. Hulse which raised the question as to whether he met the character requirements, that therefore if he desired to take a second examination under Rule 8.09 it would be necessary for the Board to investigate further the matter of whether he met the character requirements and asking him to reply promptly as to whether he intended to take the second examination and that if such were his intention that the Board would proceed with the hearing, giving him due notice.

Under letter dated September 14, 1960, Mr. Zipkin wrote the secretary that he did intend to take a second bar examination in February, 1961, and asking that he be informed as to the questions raised regarding his character, the facts pertaining to the same, the persons raising said questions and notice as to the time and place of the proposed hearing.

The Board discussed the matter of the time, place and procedure of a hearing in its meeting in St. Louis on September 30, 1960, a copy of the minutes of said meeting already having been furnished the Court.

Under date of October 3, 1960, the secretary wrote Mr. Zipkin that at said meeting the Board voted to hold a hearing on his application to take the bar examination, directed to the question of whether he met the requirement of good moral character, the hearing to be held in an appropriate room at the law school, University of Missouri, Columbia, Missouri, on Friday, October 21, 1960, starting at 1:00 P. M., and that in particular the Board would investigate the matter of whether or not he influenced or

attempted to influence a witness or witnesses to misrepresent or withhold facts in connection with the Freeman hearing and also whether or not he held himself out as a member of the bar in connection with certain divorce litigation pending in Boone County, Missouri. The secretary informed Mr. Zipkin that the Board has power under Supreme Court rule to issue subpoenaes and if he desired any subpoenaes, to request same promptly and they would be issued. He was also informed that he was entitled to be represented by counsel if he desired and to present evidence and examine witnesses.

By letter dated October 7, 1960, Mr. Zipkin replied, stating he would be represented by Mr. Louis Wagner, of the Kansas City bar, and asking that he be furnished with the names of the witnesses the Board intended to subpoena in regard to the charges, so that his counsel could properly present evidence and examine witnesses at the hearing.

By letter dated October 11, 1960, the secretary wrote Mr. Zipkin, listing the names of the witnesses which the Board intended to subpoena, and stating that all of said witnesses were of Columbia, Missouri.

The hearing was held as scheduled at Columbia, Missouri, at the law school on Friday, October 21, 1960. Mr. Zipkin was present in person and represented by Mr. Louis Wagner. The Board has already furnished the court with a copy of the minutes of said meeting.

Thereafter, the Board requested Mr. Hulse to have the reporter transcribe the testimony of all witnesses. Applicant's attorney, Mr. Wagner, later notified the Board that he did not desire to present any additional evidence on behalf of applicant and Mr. Croft, president of the Board, wrote Mr. Wagner under date of November 1, 1960, that the Board therefore considered the hearing concluded so far as testimony is concerned.

Each member of the Board has had available a copy of the transcript of the testimony of the witnesses. It is the decision of the Board that applicant is not a person of good moral character as required by Rule 8 and that he should not be permitted to take the bar examination. Messrs. Croft, Donnelly, McQuie, and Seiler concur in this decision. Mr. Oliver dissents.

In the opinion of the Board, the two most important witnesses on the factual issue of whether applicant did or did not attempt to influence the testimony of one Irene Weirhake in the Freeman hearing were the applicant himself, and Michael J. Trombley, who testified to a telephone conversation which Zipkin had with Trombley and Mrs. Trombley concerning Irene Weirhake. The transcript of the testimony of said witnesses is attached and the Board believes the following to be the facts, based on its observation of the witnesses and a study of the transcript (the following references in parentheses are to pages in Vol. 1 of the transcript): that Mr. Trombley, a young attorney at Columbia, in whose household Mrs. Weirhake was acting as housekeeper or maid, was gratuitously acting as adviser to Mrs. Weirhake relative to the questioning which she anticipated at the hearing as to her relations with Dr. Freeman (10, 15).

That Mrs. Weirhake was still under treatment from Dr. Freeman (9).

That Zipkin and Trombley were friends in law school (2), close friends at one time (16), and Zipkin said he once considered Trombley his closest friend (47). Both Trombley and Mrs. Trombley had once been patients of Dr. Freeman (12). The friendship between Zipkin and Trombley broke up over Dr. Freeman (48), after Trombley and his wife had broken off their relationship with Freeman (23). Apparently this breakup occurred in March

or April, 1960 (7, 19) although Zipkin said that the end of the friendship was sometime in 1959 (46, 47), but later said that when he made the telephone call to Mr. and Mrs. Trombley referred to below, which apparently was in the late spring of 1960, he was then under the impression that the Trombleys were still his friends (25), that he had been a guest in their home even though they were no longer seeing Dr. Freeman (25) and that he saw no reason not to see them just because they weren't patients of Freeman any more (25).

That a few days after Trombley had advised Mrs. Weirhake to tell the truth when being questioned by the attorneys as to her relationship with Freeman (10) Zipkin called the Trombleys, saying that he was helping Freeman with his case (4, 10), that there was a problem in that Irene was in a truth telling mood and he felt Trombley and wife should meet with Zipkin and Freeman to see what could be done about Irene (5), that they ought to get together to decide what to do (9, 10, 11); Trombley inquired of Zipkin if he were trying to intimidate the witness, and that Zipkin said that he thought it would be better for everybody all the way around if they met and decided what to do with Mrs. Weirhake (5).

Zipkin testified that he understood the Trombleys were instrumental in getting Mrs. Weirhake to testify (27), that they already knew about her being involved in the hearing when he called them (37) [although he also testified that he called them because he didn't think they knew (50)] and that he did call the Trombleys about a month prior to the Freeman hearing and that Trombley said to him that he regarded the call as an attempt to intimidate Mrs. Weirhake (40). Zipkin at first testified that he called the Trombleys because he had heard that Mrs. Weirhake was going to accuse Dr. Freeman of rape or

sexual immorality (26), but he later testified that when he called the Trombleys he did not know what Mrs. Weirhake was going to testify to (50, 51, 54, 58).

Carl Sapp, a member of the Boone County bar, and Dr. Freeman's attorney at the hearing and prior thereto (5)*, testified that he did not know whether Zipkin ever interviewed any witnesses or gathered evidence with regard to the Freeman hearing and didn't recall directing him to do so (6), but he later stated that Zipkin played no part in t! Freeman hearing (10).

Based on the record of the hearing before the Board, therefore, it is the finding of the Board that applicant Michael Zipkin did attempt to influence the testimony of Irene Weirhake by approaching Mr. and Mrs. Trombley with the suggestions as testified to by Trombley, that applicant Michael Zipkin was not telling the truth in his testimony before the Board with regard to what he said in the telephone conversation to Mr. and Mrs. Trombley and as to whether or not he knew when he telephoned them that Mrs. Weirhake was going to testify as to sexual relations with Freeman.

The Board finds that there was no substantial evidence before it to support the allegation that the applicant had held himself out as an attorney in connection with certain divorce litigation pending in Boone County, Missouri. In this connection, Loren D. Baurichter, a farmer of Boone County, Missouri, and the defendant in said litigation (12) testified that Zipkin came to his home with Baurichter's wife, after the estrangement, to help her inventory some property there (13), and during the con-

*Note: Except as otherwise specifically noted, all remaining page references are to Vol. II of the transcript of testimony of the hearing of October 21, 1960.

versation between the witness, one James Earl Grant, the witness' wife, and Zipkin (17), Zipkin stated, "I am a lawyer" (14). Nothing by way of amplification of the remark was made (15), and Zipkin did not, according to the witness, state that he was the attorney of the witness' wife (30). The witness further testified that he thought the statement was "unusual" (25), since although he knew that Zipkin had been in law school, he didn't know his exact status (16), and didn't know when he was to graduate (22).

Ada Margaret Baurichter, the wife of Loren D. Baurichter, testified that on the occasion mentioned, Zipkin stated, "I am studying to be a lawyer and I possibly know more of the law than you do" (84, 95). She stated that she was positive that at no time did Zipkin say that he was a lawyer (84). This witness further testified that Zipkin had never done anything by way of representing her in her divorce litigation (95) and that he had never discussed the Freeman hearing with her (101), although quite possibly they had been together in a group when it was discussed (100). The applicant corroborates this witness' version of what was said (31, 32).*

James Earl Grant, the hired man at the Loren D. Baurichter farm, testified that Zipkin came on three different occasions to either aid Mrs. Baurichter move or take an inventory of property on the farm (31, 33). The witness testified that on the first two occasions nothing was said by Zipkin about his being a lawyer (32, 33, 39), but that on the last occasion, when they came to take the inventory, and when Loren D. Baurichter, the witness and Ada Margaret Baurichter were also present (37, 47), Zipkin said "I am a lawyer and know a little more about the

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*Note: Referring to Vol. I of the transcript.

law than you do" (35, 46). The witness further testified that after the statement was made Loren D. Baurichter left the group, and thereafter Zipkin repeated that he knew more about the law than the witness did, but he did not again state that he was a lawyer (38). The witness further stated that Zipkin did not say that he was the lawyer of Ada Margaret Baurichter (35), and the witness knew he had been in law school, but didn't think that he was a lawyer (32, 40). This witness' testimony was partially impeached through prior inconsistent statements made and which he acknowledged making (51, 52).

Because of the conflict of the testimony on this point and the fact that only this one isolated instance of holding himself out as an attorney is charged, the applicant is not disqualified on these grounds.

All of the witnesses who testified before the Board were personally acquainted with the applicant, for terms ranging from a few months to something more than two years (2, 5, 12, 31, 54, 70, 86). Carl Sapp, Loren D. Baurichter and Dean Joseph Covington did not know the applicant's general reputation for good character (7, 27, 71). Sapp stated that he would sign a character reference for Zipkin, that he always conducted himself as a gentleman so far as he knew (7). Dean Covington stated that he had no personal knowledge of anything prohibiting Zipkin from serving as an attorney (71) and nothing ever came to his attention as Dean while Zipkin was a student, which would reasonably cause the Dean to call Zipkin in for counseling (74). Baurichter regarded Zipkin as a friend (18) and had invited him to his home (27). Ada Margaret Baurichter and Professor Edmond Ralph Anderson, Jr., each testified that the applicant had a good reputation as to general character (61, 63, 66, 87). Michael Trombley testified that the applicant's reputation was not

particularly good (13), although he admitted that in 1959 he testified under oath at the applicant's divorce hearing that his reputation was good (14). Even though it might be said that the evidence preponderates in favor of the reputation of the applicant for good character, yet the general reputation would have to yield in deciding this matter, to the specific acts and facts with regard to the telephone conversation above set out, as the determinative factor.

In the opinion of the Board, the testimony of Trombley and Zipkin as to what was said and suggested in the telephone conversation is irreconcilable. It is true that in concluding that Zipkin was not telling the truth about the telephone conversation the Board is believing one witness and disbelieving the other, but this is a problem faced by any fact finding body when there is a dispute of fact between two witnesses on some material point. The Board does not believe that it is necessary to have independent corroboration of Trombley's testimony on this point in arriving at a decision about lack of good morals on the part of Zipkin, particularly in view of the inconsistencies in applicant's own testimony.

It is the decision of the board that the burden of proof of good moral character has not been satisfied by the applicant, and based on the evidence before the Board at said hearing, that the applicant is not a person of good moral character so far as being eligible to take the examination to practice law is concerned.

None of the above evidence or any of the charges with respect to applicant was known to the Board at the time Zipkin was permitted to take the June, 1960, bar examinations and the Board does not feel that it is bound by the prior determinations of good moral character made by the Sixteenth Circuit bar committee on February 19, 1959, with respect to his law student registration or by the

Thirty-fourth Circuit bar committee on May 4, 1960, with respect to his bar examination application, inasmuch as none of the information set out above was before or considered by either of said circuit bar committees and the information did not reach the Board until on or about August 24, 1960, as stated above.

Respectfully submitted,

BOARD OF LAW EXAMINERS

/s/ Thomas L. Croft
Thomas L. Croft, President

/s/ Robert E. Seiler
Robert E. Seiler, Secretary

/s/ David Donnelly
David Donnelly, Member

/s/ Walter D. McQuie, Jr.
Walter D. McQuie, Jr., Member

TO THE SUPREME COURT OF MISSOURI:

In the Matter of the Determination of Good Moral Character of Michael Zipkin, on His Application to Take the Missouri Bar Examination.	No. 17333

SEPARATE DISSENTING OPINION OF JOHN W. OLIVER.*

I cannot join with my colleagues because I do not believe that the evidence in the record as a matter of law, can be said to support the findings of the Board. I dissent because it is my view that any conclusion that Zipkin *in fact* attempted to influence the testimony of Irene Wierhake must rest solely upon the testimony concerning a single telephone conversation. And, not only must one accept Trombley's version of what actually was said in that telephone conversation, he must also accept Trombley's conclusion that what was said did *in fact* constitute an attempt to intimidate a witness.

If the problem was confined merely to a determination of whether Trombley or Zipkin was telling the truth as to what was said in that single telephone conversation, I would not feel bound to dissent from the judgment of my colleagues on that single question, although frankly, I would be bothered about such portions of Trombley's testimony that it made it possible for him to forget that he had offered sworn testimony in support of Zipkin's good reputation as recently as last year (14).

I dissent from the Board's finding that "Michael Zipkin did attempt to influence the testimony of Irene Weirhake by approaching Mr. and Mrs. Trombley with

*Note: All page references are to Vol. I of the testimony at the October 21, 1960, hearing

suggestions as testified to by Trombley" (page 6 of Majority Opinion) because I do not believe that the acceptance of Trombley's testimony is sufficient as a matter of law to establish that Zipkin did *in fact* attempt to influence the testimony of Irene Weirhake. It offends my juridical sense of reason to try to believe that had Zipkin actually wanted to intimidate Irene th[illegible] he would have selected such an unlikely way to accomplish that purpose.

The supreme law of the land requires, or at least such is my view of it, that "officers of a State cannot exclude an applicant where there is no basis for their finding that he fails to meet . . . permissible standards", as stated in *Schware* v. *Board of Bar Examiners*, 353 U.S. 232. And, as stated in the concurring opinion of that case, "refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the due process clause". I do not believe that there is a sufficient factual basis for a finding that Zipkin is not of good moral character on the theory that the Board accepts Trombley's conclusion that he thought that Zipkin was attempting to influence the testimony of a witness.

Nor do I believe that a finding that accepts Trombley's version of what was said on the telephone is a sufficient basis for a conclusion that Zipkin was "not telling the truth" in the sense that such a finding could be a sufficient legal basis for the conclusion that Zipkin is of bad moral character. The recognized difficulty of determining perjury has caused the law to require proof of at least two credible witnesses or the corroboration by substantial evidence of the testimony of a single witness. See *State* v. *Brinkley*, 189 S.W.2d 314, 335.

Of course, the Board is not under duty to prove perjury in this case, but it is my view that under the law

the Board is required to base its findings upon substantial evidence. To me, it is indeed a serious business to deny a man the right to take a bar examination on the sole basis of the full acceptance of the word of a single witness who has been but recently a patient of a psychiatrist (12).

This case, in my judgment, involves a much deeper question than who has the burden of proof. Again, I do not rest my dissent on the idea, that by analogy, the principles recently applied in *Chaunt* v. *United States*, 29 U.S. Law Week. 4021, decided November 21, 1960, are controlling.

My dissent is based upon my conviction that the evidence in this record does not afford a sufficiently substantial factual basis upon which a finding of lack of good moral character can be predicated. If the burden of proof question is important, then it seems to me that the uncontradicted testimony of Carl Sapp, of the Columbia Bar, of Dean Joe Covington of the University of Missouri Law School, and of Professor Anderson of that school, all of whom testified that in their opinion Zipkin was of good moral character, would at least shift the burden of going forward with the evidence upon the Board. Under any construction of the burden of proof, I simply cannot find this record sufficient to support the conclusion of the Board.

/s/ John W. Oliver
John W. Oliver, Member

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 288.

IN THE MATTER OF THE DETERMINATION OF GOOD MORAL CHARACTER OF MICHAEL ZIPKIN.

On Petition for a Writ of Certiorari to the Supreme Court of Missouri.

BRIEF OF RESPONDENT IN OPPOSITION.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 288.

IN THE MATTER OF THE DETERMINATION OF GOOD MORAL CHARACTER OF MICHAEL ZIPKIN.

On Petition for a Writ of Certiorari to the Supreme Court of Missouri.

BRIEF OF RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

The order of the court below is unreported and is set out in full at page A1 of the Petition. The findings and order of the State Board of Law Examiners are unreported and are set out at pages A2-A15 of the Petition.

JURISDICTION.

The order of the Supreme Court of Missouri was entered on April 16, 1961. A motion for rehearing was denied on May 8, 1961. The jurisdiction of the Court is invoked under 28 U. S. C. 1257.

QUESTION PRESENTED.

Whether, where there is a direct conflict of evidence on a material point, it is a violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution for a State administrative tribunal to believe one witness and disbelieve another.

CONSTITUTIONAL PROVISION INVOLVED.

Section 1 of the Fourteenth Amendment of the United States Constitution provides in pertinent part as follows: "No State shall . . . deprive any person of life, liberty or property without due process of law."

STATEMENT.

Petitioner graduated from Missouri University School of Law in June, 1960, and took the Missouri State Bar Examination that same month, but did not pass. While the Board of Law Examiners was still in the process of grading the examination papers, a member of the Board received a complaint from a member of the Missouri Bar that petitioner had held himself out as an attorney and had attempted to influence the testimony of witnesses in a hearing pertaining to charges of unprofessional conduct of a Missouri psychiatrist, one Dr. Freeman. Petitioner had previously been found to be of good moral character by the Missouri Bar Committees for the Sixteenth and Thirty-fourth Circuits, and this was the first complaint the Board had received about petitioner (Petition, Appendix B, pages A2-A3).

The Board decided to complete the grading of applicant's examination paper, along with the papers of all other applicants, to see whether he passed before proceeding further. Petitioner failed the Bar Exam and was so notified on September 13, 1960. He was advised at that time that if he desired to take a second Bar Examination, it would be necessary for the Board to investigate further the matter of petitioner's character and hold a hearing thereon. Petitioner advised the Board that he did intend to take a second Bar Examination in February, 1961. On October 4, 1960, petitioner was advised that a hearing on the question of whether he met the requirement of good moral character would be held on October 21, 1960. Prior to the hearing, the Board advised petitioner that the hearing would be particularly directed to the questions of whether petitioner had held himself out as a member of the Bar and whether he had attempted to influence the testimony of a witness in connection with the

Dr. Freeman hearing. Petitioner was provided with names of the witnesses the Board intended to subpoena in regard to the charges, and he was advised that he could present witnesses, request issuance of subpoenas and be represented by counsel (Petition, Appendix B, pages A3-A5).

The hearing before the Board was held on October 21, 1960, as scheduled, and petitioner was present in person and represented by an attorney. At the hearing, the main witness who testified against petitioner was Michael J. Trombley, a young attorney from Columbia, Missouri. Trombley testified that he and his wife employed a housekeeper by the name of Irene Weirhake who was under treatment by Dr. Freeman. She was advised that she was to appear as a witness against Dr. Freeman in the hearing to be conducted about his alleged professional misconduct. She was confused and asked Trombley what she should do. Trombley advised her to tell the truth, and she then advised Dr. Freeman that she was going to testify and was going to tell the truth. Dr. Freeman told her that this would not be the wise thing to do. (Petition, Appendix B, pages A-6-A7, and see Volume I [R-I] of the transcript of the hearing at pages 3, 9, 10.) Trombley testified that shortly thereafter petitioner called the Trombleys and said that he was helping Dr. Freeman with his case and that while things were going well, there was a problem because Irene Weirhake was in a "truth telling mood" and that he felt that the Trombleys should meet with petitioner and Dr. Freeman to see what could be done about Mrs. Weirhake. (Petition, Appendix B, pages A6-A7, and R-I 3, 4, 5, 6, 10.) Trombley testified that he asked petitioner whether he was trying to intimidate a witness and petitioner replied that it would be best for everybody if they all met and decided what to do with Mrs. Weirhake (R-I 5).

Petitioner testified that he had been a patient of Dr. Freeman's since approximately December, 1958, when he

was introduced to the doctor by Mr. and Mrs. Trombley. With regard to the telephone conversation, petitioner denied that he said anything about Irene Weirhake being in a "truth telling mood," but he admitted making the call and gave two different versions of his reason for making it. He first testified that he called Mr. and Mrs. Trombley because he had heard that Mrs. Weirhake was going to accuse Dr. Freeman of rape or sexual immorality and he wanted "to inform them of this" (R-I, 25-26). His first version of the telephone conversation was that he told the Trombleys that "I just heard Irene Weirhake is going to accuse Dr. Freeman of rape and I wanted to tell you about this because if Irene gets into a mess she is just liable to drag you into it" (R-I, 25). Later in his testimony, however, petitioner stated that he called "the Trombleys simply to tell them that I had heard Irene was going to testify, I didn't know what to." He stated that he told the Trombleys only that he heard that Mrs. Weirhake was going to testify against Dr. Freeman, that he "didn't hear what about or what the charges were," that he "had no idea" about what Irene was going to testify to at the hearing, and that he "did not tell (the Trombleys) that (he) had . . . heard that she was going to testify that she had been raped by Dr. Freeman" (R-I, 50, 51, 54, 58). Petitioner also made other inconsistent statements on other points during his testimony.[1]

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[1] Petitioner testified that the "end of the friendship (with the Trombleys) was some time in 1959 as best I can tell" at one point in his testimony (R-I, 46), and yet he also testified that when he made the phone call to the Trombleys in the Spring of 1960, he was "under the impression that Mr. and Mrs. Trombley were still my friends" (R-I, 25). Also, petitioner testified that he understood that the Trombleys were instrumental in getting Mrs. Weirhake to testify and that they already knew about her being involved in the hearing when he called them (R-I, 27, 37), but he also testified that he called them because he did not think they knew that Mrs. Weirhake was going to testify (R-I, 50). Although there may possibly be some conceivable way in which to explain away these apparent inconsistencies (see Petition at page 26, foot-

The Board, one member dissenting, held that petitioner had not satisfied his burden of proving that he was of good moral character and it therefore denied him permission to take a written examination to practice law.[2] The Board based this decision on its finding that petitioner attempted to influence the testimony of Irene Weirhake by approaching Mr. and Mrs. Trombley with the suggestions as testified to by Trombley, and on its further finding that petitioner did not tell the truth in his testimony before the Board either as to what he said in the telephone conversation with the Trombleys or as to whether or not he had heard prior to the time of the phone conversation that Irene was going to testify as to sexual relations with Dr. Freeman (Petition, p. A8).

As the Board recognized, the testimony of Trombley and petitioner was irreconcilable (Petition, p. A11). Faced with the inconsistencies in petitioner's own testimony, and perhaps influenced by the demeanor of petitioner when he testified, the Board concluded that Trombley's version of what was said in the telephone conversation was correct and that petitioner was not telling the truth in his testimony before the Board.

On appeal to the Supreme Court of Missouri, that Court found the Board's findings were "supported by competent and substantial evidence on the whole record," and it therefore affirmed the findings and order of the Board of Law Examiners (Petition, p. A1).

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note 18), the statements made by petitioner are basically inconsistent and certainly the Board finding that they were inconsistent was warranted from petitioner's testimony.

[2] The Board found in favor of petitioner on charge that he held himself out as an attorney (Petition Appendix B, pp. A8-A10).

ARGUMENT.

I.

The decision below is clearly correct and depends solely upon a factual determination involving the credibility of witnesses.

The decision below is clearly correct. Trombley testified unequivocally that petitioner called him and Mrs. Trombley on the telephone, told them that Irene Weirhake was in a "truth telling mood," and suggested that they should get together with him and Dr. Freeman to see if they could do something about this. The Board of Bar Examiners found the facts to be as Trombley had testified and concluded that because of this attempt on the part of the petitioner to influence the testimony of Mrs. Weirhake and because of petitioner's untruthful statements to the Board, petitioner had not made a sufficient showing of good moral character.

Petitioner, of course, denied the statements attributed to him by Trombley, but in so doing, he completely changed his testimony before the Board within the space of a few short minutes. Thus, in the early part of petitioner's testimony he stated that he told the Trombleys in the telephone conversation that he "just heard Irene Weirhake is going to accuse Dr. Freeman of rape and I wanted to tell you about this because if Irene gets into a mess she is just liable to drag you into it" (R-I 26). Realizing that his knowledge at the time of the telephone conversation of what Mrs. Weirhake was going to testify to at the hearing could show a motive for petitioner, in view of his close association with Dr. Freeman, to call the Trombleys in order to attempt to change Mrs. Weirhake's testimony, petitioner later turned full circle and testified

that he did not know what Irene was going to testify to when he called the Trombleys, that he "did not hear what Irene was going to say", that all he had heard was that Irene was going to testify against Dr. Freeman, that he "had no idea" what her testimony would be and that the only information he gave to the Trombleys was that he simply heard that Irene was going to testify at the hearing and that he did not know what about (R-I 50, 51, 54, and 58). So, while petitioner first testified that he told the Trombleys that "Irene Weirhake is going to accuse Dr. Freeman of rape" (R-I 26), he later recanted and testified that he "did not tell (the Trombleys) that (he) had . . . heard that she was going to testify that she had been raped by Dr. Freeman or words to that effect" (R-I 58). Faced with this complete about-face in testimony by petitioner within the space of a few minutes about such a material fact, the Board was clearly justified in believing Trombley and not the petitioner. And the Supreme Court of Missouri was correct in holding, after a full review of the transcript, the records and the files in the case, that the findings by the Board were "supported by competent and substantial evidence".

The Board of Law Examiners is a state administrative tribunal created under Rule 8 of the Rules of the Supreme Court of Missouri. It is the duty of the Board to investigate and determine the moral fitness of applicants to take the Missouri Bar examination, and the burden of establishing eligibility rests on the applicant (Rule 8.07, Supreme Court Rule; Volume IV of the Missouri Revised Statutes, 1959). Basically, as the extended factual discussion in the petition shows (pages 19-27), the decision below involves only a determination of fact by the Board. This factual dispute was resolved against petitioner and there is no basis for a judicial review of the factual decision here. Findings of fact for ordinary administrative purposes are not subject to review but are accepted as

conclusive by this Court. See **Phillips v. Commissioner of Internal Revenue**, 283 U. S. 589, 600 (1931); **SEC. v. Central-Illinois Securities Corporation**, 338 U. S. 96, 126 (1949); **Ex parte Williams**, 277 U. S. 267, 272 (1928). Particularly this is true where the question before the administrative tribunal is solely one of credibility of witnesses. As this court pointed out in **Merchants' Warehouse Co. v. United States**, 283 U. S. 501, 508 (1931), "the credibility of witnesses and weight of evidence are for the commission and not for the courts, and its findings will not be reviewed here if supported by evidence." See also **National Labor Relations Board v. Donnelly Garment Company**, 330 U. S. 219, 231 (1947). The only question in the case at hand is one of credibility of witnesses. The Board chose to believe one witness and disbelieve another. That decision is not subject to review here.

II.

The decision below presents no important question of federal law and does not conflict with any decision of this court.

There is no important federal issue involved in this case. The only question present is the factual one of whether petitioner satisfied the Board of Law Examiners that he was a person of good moral character. On that issue the witness Trombley testified that petitioner called Trombley and his wife and told them that he was helping Dr. Freeman with his case but there was a problem because Irene Weirhake was in a "truth telling mood" and that the Trombleys should get together with petitioner and Dr. Freeman to see what could be done about this. The Board specifically found that this conversation did occur, and in view of this apparent attempt to influence a witness' testimony, and in view of petitioner's changing of his testimony at the hearing, the Board was not willing

to certify petitioner as a person of good moral character. In the face of the findings of fact in this case, the Board could hardly do otherwise.

Petitioner's reliance on the decisions of this Court in **Schware v. Board of Bar Examiners**, 353 U. S. 232 (1957), and **Konigsberg v. State Bar of California**, 353 U. S. 252 (1957), is completely misplaced. Those cases involved the problem of the reconciliation of the federally protected rights of freedom of association and speech guaranteed by the First Amendment with the right of a state to determine the qualifications of the members of its bar. No free speech problem is involved here. The case simply involves the right of a Board of Law Examiners to believe one witness and disbelieve the other, and respondent is aware of no decision of this Court—and, indeed, none is cited by petitioner—holding that an applicant for admission to practice law has a constitutional right to be believed when his testimony conflicts internally and is in direct conflict with that of another credible witness.

Petitioner contends that, as in **Schware** and **Konigsberg**, there is no evidence in the record which supports a finding of doubt about petitioner's character. Unlike **Schware** and **Konigsberg**, however, there was here direct evidence that petitioner had called the Trombleys on the telephone and attempted to try and do something about Mrs. Weirhake's "truth telling mood." As the Supreme Court of Missouri held in this case, this was "competent and substantial evidence" supporting the findings of the trier of the facts. In **Schware** and **Konigsberg**, on the other hand, there not only was no competent substantial evidence to support the findings of the Board, there was no evidence at all to support those findings.

This Court has had occasion recently to review the scope of the decisions in **Schware** and **Konigsberg**. In the latest

Konigsberg decision, it was pointed out that in the first Konigsberg case all the other evidence in the record could not, even with the aid of all reasonable inferences flowing therefrom, cast such doubts upon petitioner's prima facie case as to justify any finding other than that these two California qualification requirements (good character and non-advocacy of violent overthrow) had been satisfied." 366 U. S. 36, 42 (1961). In the case at hand, the evidence in the record, even without the aid of any reasonable inferences, directly sustains the finding of the Board that petitioner tried to influence the testimony of Mrs. Weirhake and had changed his own testimony, and that therefore he had not shown that he was of good moral character. Moreover, as this Court pointed out in **Re Anastapalo**, 366 U. S. 82, 97 (1961), the function of this Court "is solely one of constitutional adjudication, not to pass judgment on what has been done as if we were another state court of review, still less to express any view upon the wisdom of the state's action." Petitioner here asks not for a constitutional adjudication, but that this court pass judgment on the decision of the Board of Law Examiners and the Supreme Court of Missouri and that it set aside findings of fact supported by competent evidence and replace them with a finding favorable to petitioner. Such a request by petitioner fails to show an "appropriate regard for the limited range" of this Court's authority. **In re Anastapalo**, 366 U. S. 82, 97 (1961). The short of the matter is that petitioner has no constitutional right that he be believed and that another be disbelieved.

CONCLUSION.

The decision below involves only a factual dispute turning on the credibility of witnesses, and the findings of the Board of Law Examiners were correct and clearly supported by competent evidence. There is no important

question of federal law involved in this matter, and there is no conflict with any decisions of this Court. It is, therefore, respectfully submitted that the petition for a writ of certiorari should be denied.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961.

No. 288.

IN THE MATTER OF THE DETERMINATION OF GOOD MORAL CHARACTER OF MICHAEL ZIPKIN.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI.

BRIEF FOR PETITIONER MICHAEL ZIPKIN.

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IN THE

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BRIEF FOR PETITIONER MICHAEL ZIPKIN.

OPINIONS BELOW.

The order of the court below (R. 118) is unreported The findings and order of the State Board of Law Examiners (R. 93-104) are unreported.

JURISDICTION.

The court below entered its judgment on April 10, 1961 (R. 118). Petitioner's motion for rehearing was overruled on May 8, 1961 (R. 122). The petition for a writ of cer-

tiorari was granted on October 9, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

QUESTION PRESENTED.

Whether petitioner has been denied permission to take the Missouri bar examination in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution because there is no rational justification in the record for the finding of the Missouri Board of Law Examiners that petitioner is not a person of good moral character.

CONSTITUTIONAL PROVISION INVOLVED.

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides in part as follows:

> "No state shall . . . deprive any person of life, liberty or property without due process of law . . . ."

STATEMENT.

I. Background to the Board of Law Examiners Hearing.

In June of 1960, at the age of twenty-five, petitioner Michael Gerald Zipkin, from Kansas City, Missouri, graduated from the University of Missouri School of Law at Columbia, Boone County, Missouri (R. 37, 68, 93). He had attended the University of Missouri and later the Missouri University Law School since 1953 (R. 68).

On February 19, 1959, having investigated him with regard to his law student registration filed December 15, 1958, the bar committee for the Missouri Sixteenth Circuit

(Kansas City, Jackson County) found that petitioner was of good moral character. And on May 4, 1960, after investigating petitioner with regard to his application to take the Missouri bar examination, the bar committee for the Thirteenth Circuit likewise found that petitioner was of good moral character (R. 93, 101).[1] Petitioner took the June, 1960, Missouri bar examination, but did not pass (R. 94).

While the bar examination papers were being graded, however, a member of the Board of Law Examiners was informed by a Boone County, Missouri, attorney[2] that petitioner allegedly had held himself out as an attorney, and had attempted to influence the testimony of a witness at the hearing before the State Board of Healing Arts of one Dr. Freeman, a Columbia, Missouri, psychiatrist (R. 93). The Freeman hearing was held on June 25, 1960 (R. 3), and resulted in Dr. Freeman's license being revoked for unprofessional conduct (R. 93).[3]

An investigation of the charges against petitioner was made at the instance of the Board of Law Examiners, and when petitioner failed the bar examination, he was notified on or about September 13, 1960, that if he desired to

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1. While the Board of Law Examiners' opinion referred to the Thirty-fourth Circuit (New Madrid and Pemiscot counties), there is apparently no question that this should be the Thirteenth Circuit, consisting of Boone and Callaway Counties, as it seems clear that the character investigation upon petitioner's application to take the Missouri Bar examination was carried on at Columbia in Boone County.

2. The name of the complaining lawyer was never revealed by the Board, notwithstanding the efforts of petitioner and his attorney to find out (R. 2, 107-108).

3. The Freeman matter has now been appealed to the Missouri Supreme Court, *Freeman* v. *Board of Registration for the Healing Arts*, Docket No. 49008.

take a second examination, it would be necessary for the Board to investigate further the matter of petitioner's character and hold a hearing thereon (R. 94, 105-106). Petitioner replied that he wanted to take a second bar examination in February, 1961, and asked that he be informed of the questions raised regarding his character, the facts pertaining to and the persons raising the same, and that he be given notice as to the time and place of the hearing (R. 95, 107). The Board thereafter advised petitioner that a hearing would be held on October 21, 1960, at the Missouri Law School, and that the hearing would be particularly directed to the questions of whether petitioner had held himself out as a member of the bar in connection with certain Columbia divorce litigation and whether he had influenced or attempted to influence a witness or witnesses to misrepresent or withhold facts in connection with the Freeman hearing (R. 95, 108-109). Petitioner requested and was provided with the names of the witnesses the Board intended to subpoena in regard to the charges, and petitioner was advised that he could present evidence, request issuance of subpoenas and be represented by counsel (R. 95-96, 109-111).

II. The Hearing and the Testimony.

The hearing before the Board of Law Examiners was held in Columbia on October 21, 1960, as scheduled. Petitioner was present in person and represented by an attorney (R. 1, 96). The witnesses who testified were those the Board had advised petitioner it intended to subpoena, plus Mrs. Ada Margaret Baurichter and petitioner himself. All of the witnesses who testified before the Board were personally acquainted with petitioner for terms ranging from a few months to over two years (R. 100).

A. Carl Sapp.

Carl Sapp, a practicing attorney of Columbia, Boone County, Missouri, of approximately twelve years (R. 3), testified that he had known petitioner for about six or seven months (R. 4); that while he was not acquainted with petitioner's reputation (R. 5), "his conversation and conduct at the times that I have seen and talked to him have been above reproach and he has conducted himself as a gentleman in my presence" (R. 5); and that he would sign a character affidavit for petitioner (R. 5).

Mr. Sapp also testified that he represented Dr. Freeman in the hearing before the State Board of Healing Arts on June 25, 1960 (R. 3); that he never employed petitioner or worked with petitioner in any manner (R. 4); that he never requested petitioner to interview witnesses or gather evidence in regard to the Freeman hearing (R. 4-5); that to his knowledge petitioner never engaged in interviewing witnesses or gathering evidence with regard to Dr. Freeman's hearing (R. 4); and that petitioner "never played a part in the hearing" (R. 7).[4]

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4. Mr. Sapp further testified regarding events related to a divorce action filed by his client, Ada Margaret Baurichter, against her husband (R. 5-7). Mr. Sapp stated that there was "considerable community feeling" in Columbia and Boone County by reason of the Freeman hearing and the Baurichter divorce proceeding (R. 6-7); that in June of 1960 "there were rumors all over the community about Dr. Freeman and Ada Margaret Baurichter," most of which "were believed whether there was evidence or not" (R. 7); that the complaint against Dr. Freeman was made by Mrs. Baurichter's brother (R. 6); and that the issue of petitioner's character is "very definitely" tied in with the community feeling toward Dr. Freeman and Mrs. Baurichter (R. 7).

B. Loren D. Baurichter.

Loren D. Baurichter, the husband of Ada Margaret Baurichter, testified that he had known petitioner probably a year, more or less (R. 8); that their acquaintance was social and that it has always been on a friendly basis (R. 8); that petitioner had been a guest in the Baurichter home for a ham breakfast, at which time petitioner "acted as a gentleman" (R. 13); that he had nothing against petitioner's character and has always had good relationships with his friends (R. 10); that he considered petitioner a fairly good friend (R. 12); and that he had no reason to see otherwise than that petitioner was a person of good reputation (R. 18).[5]

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5. Mr. Baurichter also testified that he was estranged from his wife and that divorce litigation was pending between them (R. 8); that petitioner had come out to his home and farm in the early part of May, 1960, when Mrs. Baurichter moved out, to help her move some furniture (R. 12-15); that petitioner had subsequently come to his home with Mrs. Baurichter when she came to take an inventory (R. 9-12, 15, 17-18); and that on this latter occasion, petitioner made the statement that "I think I know a little more about it than you do. I am a lawyer." (R. 9).

It was in relation to this latter incident that the Board inquired of Mr. Baurichter and of his hired hand, James Earl Grant (Mo. S. Ct. Record, 158-161, 163-166, 176-178), regarding petitioner's alleged statement that he was a lawyer. Petitioner (R. 74-76; see *infra*, footnote 10) and Mrs. Baurichter (R. 42-43; see *infra*, footnote 7) both denied that any such representation was made, but the testimonial conflict became inconsequential because the Board expressly stated in its decision that petitioner was not disqualified on the ground that he held himself out as an attorney. See text, *infra*, p. 17. (The testimony of James Earl Grant (Mo. S. Ct. Record, 157-178) only dealt with the attorney-representation issue and collateral matters, and therefore was not printed in the Transcript of Record and is not discussed herein.)

C. Professor Edmond R. Anderson, Jr.

Professor Edmond Ralph Anderson, Jr., of the Missouri Law School testified that he had known petitioner since the spring semester of 1958 (R. 21); that he knew petitioner as a student and socially (R. 21-22, 25); that he thought petitioner met the requirements for admittance to the Missouri Bar (R. 26); that petitioner was fit to be a member of the Bar (R. 28); that petitioner's reputation for character and truthfulness was good (R. 29-30); and that "Everybody that I know whose judgment I would respect around here has also thought well of Michael Zipkin, and in Kansas City where I understand he lives now, former students of mine speak well of him" (R. 29).[6]

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6. Professor Anderson further testified that his wife had been a patient of Dr. Freeman (R. 22); that petitioner and Dr. Freeman were fairly friendly (R. 22); that petitioner never stated that he was Dr. Freeman's attorney or that he represented Dr. Freeman (R. 23); that Dr. Freeman's hearing before the State Board of Healing Arts in the summer of 1960 was "Widely publicized and discussed in conversations and by rumors in this area" (R. 23); that he had heard that perhaps petitioner "was giving some moral support to Dr. Freeman as a friend or as a person who would stand by him" (R. 23); that although he didn't know anything about it, there was among the rumors going around a rumor that perhaps petitioner was interviewing witnesses or gathering evidence in preparation of Dr. Freeman's hearing (R. 24); and that "I have grave doubts that [petitioner] would do anything like that" (R. 29).

Professor Anderson also testified that one Michael Trombley was one of his students and that his character was good (R. 30-31); that Professor Anderson used to think of the two Michaels together, petitioner and Trombley; that he understood they were both patients of Dr. Freeman; that Trombley came from a more wealthy background and was a kind of high society type; that he thought Trombley's relationships with Dr. Freeman's friends were perhaps up and down and that Trombley was perhaps wilder than some of the rest; that he felt petitioner was to be commended in this, petitioner being more conservative and sensible; and that Trombley has changed radically and is considerably conservative now (R. 31).

D. Dean Joseph Covington.

Dean Joseph Covington of the Missouri Law School testified that he first remembered petitioner as a student in late 1958 or early 1959 (R. 32); that petitioner had never been in any of his classes and he had known petitioner only in his capacity as Dean (R. 33); that in regard to the general requirements of character and fitness, he had no knowledge that would prohibit petitioner's serving as an attorney (R. 33); that he was not acquainted with petitioner's reputation among his acquaintances and associates in and about Columbia (R. 33); and that so far as the law school's records indicated, petitioner had good grades and good background (R. 40).

E. Ada Margaret Baurichter.

Mrs. Ada Margaret Baurichter testified that she had known petitioner approximately a year and a half (R. 44-45); that she became acquainted with him when they were both patients of Dr. Freeman (R. 44-45); that petitioner was "very highly spoken of" (R. 44); and that she would say his reputation was good (R. 44).[7]

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7. Mrs. Baurichter also testified that she was the mother of five children (R. 41); that she and her husband were separated and that she had brought a divorce action against him (R. 41); that she moved out of her husband's house on approximately the second or third of May, 1960 (R. 45); that she couldn't possibly move by herself and she asked petitioner to go along (R. 41, 46); that petitioner did so, and drove the car with a trailer and helped her move some furniture (R. 41, 48); that subsequently she obtained a lawyer, Carl Sapp, and he wanted her to go back and take an inventory of what was left on the farm (R. 42, 45-46); that Mr. Sapp suggested she take someone with her when she was reluctant and afraid to go alone (R. 45, 50); that she told Dr. Freeman that Mr. Sapp said to take someone with her and Dr. Freeman said that petitioner probably would go (R. 51); that petitioner did accompany her to take inventory some time before the sixth of June, approximately (R. 45); and that on that occa-

F. Michael J. Trombley.

Michael J. Trombley, a twenty-six year old Columbia, Missouri, attorney who had received his law degree at Missouri University in February, 1960, testified that he first became acquainted with petitioner in their freshman year, 1957 (R. 55); that he and petitioner were law students together (R. 62); that they were then on friendly terms, close friends at one time, talked a lot and did things together (R. 55, 64); that they had been in Dr. Freeman's home along with Mrs. Trombley and the Baurichters (R. 64-65); and that they had not associated together as they once did because "Well, primarily over this Dr. Freeman deal" (R. 58).[8]

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sion petitioner said to Mr. Baurichter and James Earl Grant that "I'm studying to be a lawyer and I possibly know more of the law than you do." (R. 42, 50).

Mrs. Baurichter also testified that petitioner had never done any work for her in connection with her divorce by way of interviewing witnesses or obtaining testimony (R. 50); that Carl Sapp was her lawyer (R. 50); that she was a witness at the Freeman hearing before the State Board of Healing Arts (R. 53); that she did not discuss her proposed testimony with petitioner before that hearing (R. 53); that she did not discuss the Freeman case at all with petitioner, except perhaps in a group (R. 53, 54); and that she never heard petitioner discuss the Freeman hearing with any other person that may have been a witness or might have given testimony (R. 54).

8. Trombley explained that he and his wife at one time were patients of Dr. Freeman (R. 62) and were in association with him (R. 58); that "the situation came up where a lot of things were being questioned. He was acting in a questionable manner and so forth. At which time we broke off relationship with Dr. Freeman" (R. 58); that petitioner came over to the Trombley house twice after that (R. 58); that Trombley talked with petitioner about Dr. Freeman and the Trombley-Zipkin friendship "just ended right there" (R. 58); that there was "[n]othing whatsoever" about petitioner, about his character or his actions, that caused this (R. 58); and that it was more petitioner's association with Dr. Freeman (R. 58)

Trombley testified that he and his wife employed a housekeeper by the name of Irene Weirhake, that Irene had lived in their home, in a basement apartment, since November, 1959; and that she had been a patient of Dr. Freeman on and off for over a year at least (R. 55-56). Trombley stated that while Irene was still under treatment from Dr. Freeman, she was informed that she was to appear against him (R. 60); that she was very confused and asked Trombley what she should do (R. 60, 67); that Trombley told her to tell the truth (R. 60); that she went to Dr. Freeman and told him she was going to be called and that she was going to tell the truth (R. 60); that Dr. Freeman told her that this would not be wise (R. 60); and that "She came home to tell me and my wife of this . . ." (R. 60).

Trombley testified that shortly thereafter, within a matter of a couple of days, and before the Freeman hearing, a call came in from petitioner (R. 56, 60); that his wife answered on one phone and he answered in a short period of time on another (R. 56, 60); and that "Everyone was speaking" (R. 56). Trombley testified as to the substance of the conversation as follows:

> "A. Sir, Mr. Zipkin was talking to my wife when I picked up the receiver. He mentioned the fact that he was helping Dr. Freeman with his case and that things were looking well, that there had been some new material, or something new had come up but there was a problem in that Irene, I mean Mrs. Weirhake, was in a truth telling mood and that he felt that my wife and I should meet with he and Dr. Freeman to see what could be done about Mrs. Weirhake.
>
> "Q. Now, was there any further conversation other than that?
>
> "A. Well, I think at this time I interjected and my wife had been doing all the talking. I said, 'Are you

> trying to intimidate a witness? What is going on?' He said, 'I think it would be better for everybody all the way around if we met and decided what to do with Mrs. Weirhake.'" (R. 57).

Trombley testified that he shortly hung up the phone (R. 57); that thereafter he had no conversations with petitioner with reference to Dr. Freeman's hearing (R. 57); and that he had no knowledge that petitioner approached Irene personally, either before the telephone conversation or after (R. 61). In response to a Board member's question as to what in particular Trombley heard over the phone that caused him to suggest that petitioner was attempting to intimidate a witness, Trombley replied that "I sort of maybe jumped to conclusions but you take the preceding incident that I discussed, that Irene had told me about, and connected it with this [telephone] incident" (R. 60).

When asked by petitioner's attorney regarding petitioner's reputation in the community for veracity and morality, Trombley stated "I hear it both ways"; "I just don't rightly know how to answer that because I hear it both ways"; and, when pressed for his personal opinion, "I don't think it is particularly good" (R. 62-63). Trombley testified that he made up his mind to this after his talks with petitioner in the last few months of their association (R. 63, 67); that he first made up his mind in 1960 (R. 63); and that he did not have any opinion in 1959 (R. 63). Upon further questioning, Trombley stated that he had been a character witness for petitioner in his 1959 divorce case; that he had been asked then about petitioner's reputation in the community for veracity and morality; and that his answer at that time was "good" (R. 63).

G. Michael G. Zipkin.

Petitioner Michael Gerald Zipkin testified that he was introduced to Dr. Freeman by the Trombleys, who were close friends of Dr. Freeman at that time, in approximately December of 1958; that he thereafter became a patient of Dr. Freeman; and that he went to him because of his marital difficulties and because of having a difficult time in school, wanting to study but not being able to concentrate (R. 68-69). Petitioner stated that at that time Trombley was "the closest friend I ever had" (R. 69, 85) and "I considered Mr. and Mrs. Trombley to be very close" (R. 85).[9] As to what precipitated the rift between them, petitioner testified that Trombley developed "an almost fanatical hatred for Dr. Freeman" (R. 69); that when the Trombleys separated from Dr. Freeman petitioner did his best to maintain his friendship with both Dr. Freeman and the Trombleys and gradually it became impossible (R. 85); that every time petitioner would go over, even to comfort Trombley after his bar exam, he would go into a harangue about Dr. Freeman (R. 85); that the Trombleys "just got mad at me because I was seeing Dr. Freeman" (R. 69); and that "the phone conversation ended any friendship" (R. 85).

Petitioner stated that he called the Trombley home about one month before the Freeman hearing (R. 80).

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9. Petitioner stated that he and Trombley sat together in the classes and helped each other during law examinations (R. 85); that Trombley testified as a character witness at petitioner's divorce hearing (R. 69, 85); that when petitioner moved out of his apartment before the divorce he called Trombley and asked if he could stay at his house that night (R. 85); that later on Trombley was instrumental in getting petitioner a place to live the remaining part of the year at a legal fraternity house which petitioner was not a member of (R. 85); and that the Trombleys invited petitioner to Mrs. Trombley's home over the week-end in Trenton (R. 85).

When asked to tell the Board the gist of the telephone conversation, petitioner testified as follows:

> "A. Yes. At the time I made that call I was under the impression that Mr. and Mrs. Trombley were still my friends. I think Mr. Trombley said he hadn't seen me prior to that time but he took the bar this last February and I was at his home cheering him up. I was cheering him up telling him he was smart enough to pass it, so on and so forth. So, at that time we were still pretty good friends and I was a guest over there even though they were no longer seeing Dr. Freeman. I saw no reason not to see them just because they weren't patients of his any more. But, oh well, anyway I called him on the phone because I had heard this Mrs. Weirhake was going to accuse Dr. Freeman of rape or sexual immorality. At that time I knew Dr. Freeman was going to have a hearing but I didn't know who the witnesses were going to be, or anything, and as a—what I consider to be a friendly gesture—I called up the Trombley home. I did it because I had been told that Irene Weirhake had gone loco and of a sudden decided to accuse Dr. Freeman of rape or sexual immorality, whatever it was, and I called him up to inform them of this. Mrs. Trombley answered the phone. I said, 'This is Mike Zipkin,' She said, 'Yes.' And within a period of, I don't know, two or three minutes not that long, seconds. I heard the extension or somebody clinking the telephone. I said, 'And I just heard Irene Weirhake is going to accuse Dr. Freeman of rape and I wanted to tell you about this because if Irene gets into a mess she is just liable to drag you into it. She lives with you and your being ex-patients of Dr. Freeman I thought you ought to know about it. If she gets into a messy situation you and Mike might be dragged into it.' Well I just barely got the words out of my mouth when Mrs. Trombley screamed over the phone, 'Listen, Zipkin, you can't scare us and don't you ever try to frighten us.' And just about that same instant he said, 'Let me talk a

while. Dr. Freeman is going to lose his license, practice and his money and his property and his home and he is going to be driven out of Columbia. He is going to be run out and you are involved because you are trying to intimidate a witness.' And I said, 'This is Mike Zipkin. I'm not trying to intimidate you and Mike or Irene or anyone. All I wanted to do is tell you. If you want to call tomorrow and talk to me or Dr. Freeman, or talk to somebody, about what the information is about I'll tell you what I know.' The difficulty with the conversation was that not only had Trombleys known that Irene was going to testify but I understand they were instrumental in getting her to testify. * * * There was just nothing regarding any kind of intimidation. I wouldn't do a thing like that." (R. 71-72).

Later on, when petitioner was questioned again about the telephone conversation, the colloquy proceeded as follows:

"Q. Now, referring back to the phone conversation you had with the Trombleys, I believe you said something to the effect that this Irene woman is going to testify against Dr. Freeman and you folks may be dragged into it. Now, what was the purpose of your call? What possible good could you have done in telling them that when they, of course, were as well aware of it as you?

"A. Well, in the first place I did not know that they knew about it. I thought it was something on a fresh rumor. Secondly, prior to this time when Mr. and Mrs. Trombley had ceased their relationship professionally with Dr. Freeman they made the statement to me, 'You know, Mike, Mike Trombley is going to be a lawyer and we want to set ourselves up in this town and become members of the community and we just can't take a, well, we just can't stand, we won't be able to stand the gossip that is going on about him.'

"Q. When was that said?

"A. This was said in a casual conversation in their home sometime prior—after the split with Freeman but prior to his hearing, I believe. My impression of the Trombleys' split with Dr. Freeman on Mrs. Trombley's part is that she was afraid, she was frightened that being a patient of Dr. Freeman and hearing all the gossip it would reflect on her and her husband.

"Q. What did you propose to do with regard to this Irene person?

"A. I didn't propose to do anything.

"Q. When you called them up?

"A. Nothing.

"Q. What were you going to suggest?

"A. No, sir. I wasn't going to suggest anything. Irene was really their problem because, as I told them over the telephone, 'Irene is going to get herself involved in what looks like a messy situation and I am afraid you guys might get involved in it. I wanted to tell you about it because I am afraid you might get involved in it because you are ex-patients of Dr. Freeman', and because my understanding was they were afraid of gossip. They were afraid of rumors because Mike was going to practice here. They were going to set up their home here.

"Q. Were the words, 'Irene is in a truth telling humor or mood' used in the conversation?

'A. Sir. I have never used those words.

"Q. Then, of course, you heard Mr. Trombley testify?

"A. Yes.

"Q. Then when he testified to the effect you said, 'Irene is in a truth telling mood and we ought to do something about it' that is just not the truth?

"A. Yes, that is not the truth. I did not say that to him.

"Q. And you did not say anything that would lead any person to believe the same effect as those words?

'A. No, I said nothing to them in any conversation which had any hint of intimidation toward Irene or

anyone else. I merely called them as a friendly gesture to inform them of something that I didn't know they knew because she was living with them and they were ex-patients of Dr. Freeman. She had told me she was afraid of gossip and I wanted them to know that the woman that was living with her was involved in the Freeman hearing and that they ought to know about it. They, of course, already knew about it and there was no intimidation involved on the phone call. It was a friendly conversation." (R. 77-78).

Petitioner further testified that he did not talk with Dr. Freeman or anyone about making the call to the Trombleys (R. 79-80); that he never discussed with Dr. Freeman, after he had made call, the fact that he had made it (R. 80); and that "I have never spoken to Irene about anything connected with the Freeman matter" (R. 80). Petitioner also stated that he never had any discussions with Dr. Freeman or Mr. Sapp about the testimony of any other witnesses (R. 84); and that he did not make any phone calls to anyone about any other witnesses (R. 86).[10]

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10. Petitioner was interrogated further about his telephone call to the Trombleys, and he went through the essentials of his testimony about it three additional times (R. 80-83; 87-88; 89-90).

Petitioner was also questioned about his trips to the Baurichter farm with Mrs. Baurichter and the events thereof (R. 72-77). Petitioner testified that while at the farm on the inventory trip he said something to the effect of "I know this law a little better than you do" or "I think I know a little more about the law on this than you do" (R. 74-76), but petitioner denied that he ever said he was a lawyer (R. 75-76). As already pointed out, *supra*, footnote 5, the attorney-representation charge was expressly rejected by the Board in its decision. See text, *infra*, p. 17.

III. The Decisions of the Board of Law Examiners and the Court Below.

On February 13, 1961, the Board of Law Examiners' decision that petitioner was not a person of good moral character and that he should not be permitted to take the bar examination was filed in the Missouri Supreme Court (R. 93). Four members of the Board concurred in the decision (R. 101), and one member dissented (R. 102).

The Board expressly stated that petitioner was not disqualified on the alleged ground that he held himself out as an attorney:

> "The Board finds that there was no substantial evidence before it to support the allegation that the applicant had held himself out as an attorney in connection with certain divorce litigation pending in Boone County, Missouri." (R. 98).

The Board reviewed the evidence in this regard and concluded:

> "Because of the conflict of the testimony on this point and the fact that only this one isolated instance of holding himself out as an attorney is charged, the applicant is not disqualified on these grounds." (R. 99).

On the intimidation charge, however, the Board found against petitioner:

> "Based on the record of the hearing before the Board, therefore, it is the finding of the Board that applicant Michael Zipkin did attempt to influence the testimony of Irene Weirhake by approaching Mr. and Mrs. Trombley with the suggestions as testified to by Trombley, that applicant Michael Zipkin was not telling the truth in his testimony before the Board with regard to what he said in the telephone conversation to Mr. and Mrs. Trombley and as to whether or not he

knew when he telephoned them that Mrs. Weirhake was going to testify as to sexual relations with Freeman." (R. 98.)

The Board stated that the testimony of Trombley and petitioner regarding the telephone conversation was irreconcilable; that in concluding that petitioner was not telling the truth the Board was believing one witness and disbelieving the other; that it did not believe it was necessary to have independent corroboration of Trombley's testimony on this point, particularly in view of the inconsistencies in petitioner's own testimony; that the burden of proving good moral character had not been satisfied by petitioner; and that the Board did not feel bound by the prior determinations of the Sixteenth and Thirteenth[11] Circuit bar committees because the information on which the Board acted had not been before or considered by either of the Circuit bar committees (R. 100-101).

The Board summarized the testimony of the witnesses other than petitioner regarding his character and reputation, and commented as follows:

> "Even though it might be said that the evidence preponderates in favor of the reputation of the applicant for good character, yet the general reputation would have to yield in deciding this matter, to the specific acts and facts with regard to the telephone conversation above set out, as the determinative factor." (R. 100).

Board member Oliver dissented (R. 102-104). He discussed the constitutional issue; relied on *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, quoting from the concurring opinion in that case to the effect that the "refusal to allow a man to qualify himself for the profession on a

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11. See footnote 1, *supra*.

wholly arbitrary standard or a consideration that offends the dictates of reason offends the due process clause"; and concluded that "the evidence in this record does not afford a sufficiently substantial factual basis upon which a finding of lack of good moral character can be predicated." (R. 103-104.)

Turning to the Missouri Supreme Court, petitioner filed a Motion for Judicial Review and Exceptions to Findings of State Board of Law Examiners, and Suggestions in support thereof (R. 114-118). Petitioner urged, *inter alia*, that the Board's findings were not supported by competent and substantial evidence upon the whole record, and that the Board's findings and order "violates petitioner's constitutional rights in that it denies him due process of law" (R. 114). In his Suggestions in support of the motion, petitioner quoted the Fourteenth Amendment to the United States Constitution; discussed *Schware* and the first *Konigsberg case*;[12] and concluded that under their authority, the decision of the Board of Law Examiners was "arbitrary, capricious and unreasonable, and in violation of petitioner's constitutional rights." (R. 115-118).

On April 10, 1961, without hearing oral argument, the Missouri Supreme Court entered a summary order overruling petitioner's exceptions and affirming the findings and order of the Board (R. 118). On May 8, 1961, petitioner's motion for rehearing (R. 119-122) was overruled (R. 122).

ARGUMENT.

Petitioner realizes that in determining the qualifications of applicants for the bar, state law examiners and

12. *Konigsberg* v. *State Bar of California*, 353 U.S. 252.

courts have difficult and often thankless duties, of important consequences to the bar and the public. Petitioner also appreciates the fact that "satisfaction of the requirement of moral character involves an exercise of delicate judgment on the part of those who reach a conclusion . . . ." *Schware* v. *Board of Law Examiners*, 353 U.S. 232, 248 (concurring opinion). Nevertheless, as also stated in the concurring opinion in *Schware*, "judicial action, even in an individual case, may have been based on avowed considerations that are inadmissible in that they violate the requirements of due process. Refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the Due Process Clause." And, as follows in that concurring opinion, "Such is the case here." *Id.* at 249.

The conclusion of the Missouri Supreme Court and the Board of Law Examiners from the record that petitioner is not a person of good moral character is contrary to the philosophy of this Court's decisions in *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, and *Konigsberg* v. *State Bar of California*, 353 U.S. 252. Those cases firmly established the constitutional principle that a person cannot be excluded from the practice of law for reasons that contravene the Due Process Clause of the Fourteenth Amendment, and thus that "a person cannot be prevented from practicing except for valid reasons," *Schware* v. *Board of Bar Examiners, supra* at 239, footnote 5, nor can a state bar committee reject an applicant "[w]ithout some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him," *Konigsberg* v. *State Bar of California, supra* at 273. Reversing the unfitness finding in each of the two cases, this Court concluded that "there

is no evidence in the record which rationally justifies a finding that [the bar applicant] was morally unfit to practice law." *Schware* v. *Board of Bar Examiners*, 353 U.S. at 246-247. And see *Konigsberg* v. *State Bar of California*, 353 U.S. at 273.[13]

In the instant case, the Missouri Board of Law Examiners has made a finding similar to that of the Boards in *Schware* and the first *Konigsberg* case which is similarly without rational justification in the record. Missouri Supreme Court Rule 8.07 regarding approval of bar applications provides in part that "In no event will permission be granted to register as a law student or to take the bar examination until the investigation as to moral character has been completed." Two such investigations were completed here, and petitioner was twice found to be of good

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13. In *Schware*, for example, New Mexico had denied Schware the opportunity to qualify for the practice of law with a finding that he was not of good moral character. This Court reviewed the evidence on which this finding was based and held that Schware had been deprived of Fourteenth Amendment due process in that "the evidence upon which the State relies—the arrests for offenses for which petitioner was neither tried nor convicted, the use of an assumed name many years ago, and membership in the Communist Party during the 1930's—cannot be said to raise substantial doubts about his present good moral character." 353 U.S. at 246.

The decisions of the Court last Term, in the second *Konigsberg* case, 366 U.S. 36, and *In re Anastaplo*, 366 U.S. 82, do not detract from the force of *Schware* and the first *Konigsberg* case and their application here. The second *Konigsberg* case and *In re Anastaplo* were "obstruction" decisions, cases where the Court held that it was "not constitutionally impermissible for a State . . . to adopt a rule that an applicant will not be admitted to the practice of law if, and so long as, by refusing to answer material questions, he obstructs a bar examining committee in its proper functions of interrogating and cross-examining him upon his qualifications." *In re Anastaplo, supra* at 88. Clearly there was no obstruction by the applicant in the instant case. As the record demonstrates, petitioner was interrogated and cross-examined at length, and he candidly answered each and every question.

moral character (R. 93, 101; and see text, *supra*, pp. 2-3). He accordingly took the bar examination and, upon failing, wanted to take it again when the express complaints of lawyer-representation and witness-intimidation were raised against him. The former charge was rejected, but on the basis of the latter, petitioner was determined to be lacking in good moral character.[14]

The incident which the Board labeled as "the determinative factor" was the "specific acts and facts with regard to the telephone conversation" between petitioner and the Trombleys (R. 100). As specific acts and facts, the Board found the following:

> "That a few days after Trombley had advised Mrs. Weirhake to tell the truth when being questioned by the attorneys as to her relationship with Freeman (10) Zipkin called the Trombleys, saying that he was helping Freeman with his case (4, 10), that there was a problem in that Irene was in a truth telling mood and he felt Trombley and wife should meet with Zipkin and Freeman to see what could be done about Irene (5), that they ought to get together to decide what to do (9, 10, 11); Trombley inquired of Zipkin if he were trying to intimidate the witness, and that Zipkin said he thought it would be better for everybody all the way around if they met and decided what to do with Mrs. Weirhake (5)." (R. 97).

From these facts as found by the Board, the Board reached the astonishing conclusion that "applicant Michael Zipkin

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14. It is obvious that this is not the usual "burden of proof" case of a bar applicant. As petitioner had twice been investigated and cleared as to his character, he "had made out a prima facie case of good character . . . ." *Konigsberg* v. *State Bar of California*, 366 U.S. 36, 42. The Board of Law Examiners hearing was not any general character examination; it was a special inquiry regarding specific charges, not too far removed from a disbarment proceeding.

did attempt to influence the testimony of Irene Weirhake . . ." (R. 98).

Petitioner's telephone call to the Trombleys was made approximately one month prior to the Freeman hearing (R. 80, 97). It is uncontroverted in the record that petitioner never talked with Dr. Freeman or anyone about making the telephone call to the Trombleys, that he never even told Dr. Freeman that he made the call after he did so, and that he never at any time talked in person to Irene Weirhake about her testimony or about anything connected with the Freeman matter (R. 79-80; and see text, *supra*, p. 16). Trombley himself testified that he had no knowledge that petitioner approached Irene personally, either before the telephone conversation or after (R. 61-62), and that after the telephone conversation, he had no further conversations with petitioner with reference to Dr. Freeman's hearing (R. 57; and see text, *supra*, p. 11). Indeed, Trombley even testified that in suggesting over the telephone to petitioner that he was attempting to intimidate a witness "I sort of maybe jumped to conclusions . . ." (R. 60). Therefore, for the Board to conclude that petitioner "did attempt to influence the testimony of Irene Weirhake" is without sufficient factual foundation. Board member Oliver effectively dismantled the reasoning of the Board majority in his dissent:

> "I cannot join with my colleagues because I do not believe that the evidence in the record as a matter of law, can be said to support the findings of the Board. I dissent because it is my view that any conclusion that Zipkin *in fact* attempted to influence the testimony of Irene Weirhake must rest solely upon the testimony concerning a single telephone conversation. And, not only must one accept Trombley's version of what actually was said in that telephone conversation, he must also accept Trombley's conclusion that what was

said did *in fact* constitute an attempt to intimidate a witness.

"If the problem was confined merely to a determination of whether Trombley or Zipkin was telling the truth as to what was said in that single telephone conversation, I would not feel bound to dissent from the judgment of my colleagues on that single question, although frankly, I would be bothered about such portions of Trombley's testimony that it made it possible for him to forget that he had offered sworn testimony in support of Zipkin's good reputation as recently as last year (14).

"I dissent from the Board's finding that 'Michael Zipkin did attempt to influence the testimony of Irene Weirhake by approaching Mr. and Mrs. Trombley with suggestions as testified to by Trombley' (page 6 of Majority Opinion) because I do not believe that the acceptance of Trombley's testimony is sufficient as a matter of law to establish that Zipkin did *in fact* attempt to influence the testimony of Irene Weirhake. It offends my juridical sense of reason to try to believe that had Zipkin actually wanted to intimidate Irene that he would have selected such an unlikely way to accomplish that purpose.

"The supreme law of the land requires, or at least such is my view of it, that 'officers of a State cannot exclude an applicant where there is no basis for their finding that he fails to meet . . . permissible standards', as stated in *Schware* v. *Board of Bar Examiners*, 353 U.S. 232. And, as stated in the concurring opinion of that case, 'refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the due process clause'. I do not believe that there is a sufficient factual basis for a finding that Zipkin is not of good moral character on the theory that the Board accepts Trombley's conclusion that he

thought that Zipkin was attempting to influence the testimony of a witness." (R. 102-103).[15]

Petitioner recognizes, of course, that the Board stated that he was "not telling the truth" in his testimony about the telephone conversation with the Trombleys and "as to whether or not he knew when he telephoned them that Mrs. Weirhake was going to testify as to sexual relations with Freeman." (R. 98). But with all due respect to the province of the fact finder, a finding that petitioner was "not telling the truth," at least insofar as it may be a basis for finding a lack of good moral character, must also be rationally justified in the record. Here, there is no such rational justification. As stated in Board member Oliver's dissent:

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15. In relation to Board member Oliver's explosion of Trombley's conclusion that what petitioner said did in fact constitute an attempt to intimidate a witness, see *In re Schlesinger*, 404 Pa. 584, 172 A.2d 835, where the Pennsylvania Supreme Court reversed an attorney's disbarment upon both procedural and substantive due process grounds. In overturning one of the findings made by the Bar subcommittee, the court said:

> "The Subcommittee made a finding that the appellant was a Communist Party functionary and that he 'took an active part in formulating and carrying out Communist Party policies, including, inter alia, the formation of the Civil Rights Congress . . . . This finding was based, as already indicated, on [witness Matt] Cvetic's personal definition as to what constituted a party functionary and his opinion that his definition embraced the appellant because, as Cvetic related, he was a member of the Legal Commission of the Communist Party. Even taken at face value, Cvetic's testimony that appellant was a member of the Legal Commission of the Communist Party and that he took an active part in the formation of the Civil Rights Congress would not warrant a finding that the appellant was guilty of unprofessional conduct." 172 A.2d at 844.

Similarly here, Trombley's "opinion" that petitioner's telephone call came within Trombley's "personal definition" of attempted intimidation of a witness, even taken at face value, did not warrant the Board's finding that petitioner was lacking in good moral character.

"Nor do I believe that a finding that accepts Trombley's version of what was said on the telephone is a sufficient basis for a conclusion that Zipkin was 'not telling the truth' in the sense that such a finding could be a sufficient legal basis for the conclusion that Zipkin is of bad moral character. The recognized difficulty of determining perjury has caused the law to require proof of at least two credible witnesses or the corroboration by substantial evidence of the testimony of a single witness. See *State* v. *Brinkley*, 189 S.W.2d 314, 335.[16]

"Of course, the Board is not under duty to prove perjury in this case, but it is my view that under the law the Board is required to base its findings upon substantial evidence. To me, it is indeed a serious business to deny a man the right to take a bar examination on the sole basis of the full acceptance of the word of a single witness who has been but recently a patient of a psychiatrist (12)." (R. 103).

As pointed out by Board member Oliver, the uncorroborated testimony of witness Trombley is hardly deserving of being taken as the gospel truth.[17] Apart from this, however, a belief that Trombley was telling the truth in his version of the telephone conversation certainly does not compel the conclusion that petitioner was not telling

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16. In regard to the requirements of Missouri law in proving perjury, *cf.* Mr. Justice Black's statement in his dissenting opinion in the second *Konigsberg* case: "In this situation, it seems to me that Konigsberg has been rejected on a ground that is not supported by any authoritatively declared rule of law for the State of California." *Konigsberg* v. *State Bar of California*, 366 U.S. 36, 58 (dissenting opinion).

17. The record clearly reflects that Trombley's admitted prejudice toward Dr. Freeman along with petitioner's continued association with him resulted in the complete severance of a once-close friendship and—notwithstanding his disclaimers to the contrary—in Trombley's hostility toward petitioner (R. 55, 57-58, 62-67; R. 69, 71-72, 84-85).

the truth or is of bad moral character because of his version. The Board hearing was held approximately five months subsequent to the telephone call (R. 1, 3, 80), and it is an indisputable fact of human experience not only that the memory of man weakens with the passing of time, but also that different people remember the same conversation in different ways. Certainly the considerable similarity between Trombley's and petitioner's testimony regarding the telephone conversation (R. 57, 71-72; and see text, *supra*, pp. 10-11, 13-14) is significant. And this Court, of course, is fully aware of the fact that the testimony of different witnesses regarding the same conversation or event inevitably varies.

Indeed, it defies reason for the Board of Law Examiners to conclude in regard to the lawyer-representation charge that

> "Because of the conflict of the testimony on this point and the fact that only this one isolated instance of holding himself out as an attorney is charged, the applicant is not disqualified on these grounds." (R. 99; and see text, *supra*, p. 17).

and not conclude the very same thing as to the intimidation charge. As to the former, Loren D. Baurichter and James Earl Grant testified that petitioner said "I think I know a little more about it than you do. I am a lawyer," whereas petitioner and Mrs. Baurichter testified that he said "I'm studying to be a lawyer and I possibly know more of the law than you do"; as to the latter Trombley testified that petitioner said words such as "I hear that Irene is in a truth-telling mood and let's get together about it," whereas petitioner testified that he said words such as "I hear Irene is going to testify against Dr. Freeman at his hearing and I thought you should know about it." It is contrary to legal logic for the Board to say that petitioner

is not disqualified because of the former variance in testimony, but that he can be disqualified in spite of the latter. And, of course, petitioner's telephone conversation with the Trombleys is just as much "one isolated instance" as the alleged attorney-representation occurrence.[18]

The fact that the Board asserts some inconsistencies in petitioner's testimony does not rescue the tenuousness of its "not telling the truth" conclusion. Aside from the fact that the asserted inconsistencies, if existent, are insubstantial and the fact that Trombley himself was inconsistent (see Board member Oliver's comment to this effect, *supra*, p. 24, and see text, *supra*, p. 11), the record demonstrates that the asserted inconsistencies are more illusory than real. For example, in apparent support for its statement that petitioner was not telling the truth "as to whether or not he knew when he telephoned [the Trombleys] that Mrs. Weirhake was going to testify as to

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18. In *Application of Courtney*, 83 Ariz. 231, 319 P.2d 991, the Arizona bar committee refused to certify applicant Courtney's good moral character because of a telephone call of his in which, according to witness Pace, Courtney attempted to solicit employment for an attorney for whom Courtney was working. Courtney denied the solicitation charge, and offered absolving testimony explaining the call. While stating that it was not "wholly convinced by petitioner's explanation," 319 P.2d at 994, the Arizona Supreme Court stated that "the Pace incident is the only one of this nature which has been suggested," referred to Courtney's admission in Minnesota and other evidence of his good character and concluded as follows:

> "We have, accordingly, arrived at this conclusion. Because the circumstances surrounding the occurrence of the Pace incident are such that the truthfulness of petitioner's explanation can never be conclusively demonstrated, and because his previous good moral character is established in the only place in which it could be established, we will resolve the decision in his favor."
>
> "It is ordered that . . . Courtney . . . be admitted to membership in the State Bar of Arizona." *Id.* at 995.

sexual relations with Freeman" (R. 98), the Board states that "Zipkin at first testified that he called the Trombleys because he had *heard* that Mrs. Weirhake was going to *accuse* Dr. Freeman of rape or sexual immorality (26), but he later testified that when he called the Trombleys he did not *know* what Mrs. Weirhake was going to *testify* to (50, 51, 54, 58)" (R. 97-98). (Emphasis added). Certainly there is a difference between hearsay rumor and actual knowledge, and between an accusation and testimony, and the record shows that petitioner was making a concerted effort to distinguish between them (*e. g.*, R. 87-88, 90). Thus, there is no real inconsistency here.[19]

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19. The other two "inconsistencies" which the Board noted are similarly unsupported by the record. The Board stated that "Zipkin said that the end of the friendship [with the Trombleys] was sometime in 1959 (46, 47), but later said that when he made the telephone call to Mr and Mrs. Trombley referred to below, which apparently was in the late spring of 1960, he was then under the impression that the Trombleys were still his friends (25) . . ." (R. 97). What petitioner actually said, as clearly shown by the record, was that his "*close* friendship" with the Trombleys terminated after their split with Freeman some time in 1959 (R. 84-85) and that "the phone conversation ended *any* friendship" (R. 85). (Emphasis added.)

The final inconsistency found by the Board is as follows: "Zipkin testified that he understood the Trombleys were instrumental in getting Mrs. Weirhake to testify (27), that they already knew about her being involved in the hearing when he called them (37) [although he also testified that he called them because he didn't think they knew (50)] . . ." (R. 97). (The brackets are the Board's.) What petitioner actually testified to, in trying to describe why the telephone conversation became so heated, was as follows: "The difficulty with the conversation was that not only had Trombleys known that Irene was going to testify but I understand [—not "understood" as stated by the Board—] they were instrumental in getting her to testify" (R. 72; and see text, *supra*, p. 14). Petitioner subsequently cleared up any possible confusion on the point (R. 77; and see text, *supra*, p. 14).

It is true that petitioner first testified that he had heard that Irene Weirhake was going to accuse Dr. Freeman of rape (*e. g.*,

In sum, there is no valid basis for the Board's conclusion that petitioner is wanting in good moral character. The Board itself indicated that "the evidence preponderates in favor of the reputation of the applicant for good character . . ." (R. 100). Such an admission was compelled by the testimony of Carl Sapp, Professor Anderson, Dean Covington and Ada Margaret Baurichter, the Board's own witnesses. Even Loren D. Baurichter testified that he saw no reason to think otherwise than that petitioner's reputation was good (R. 18; and see text, *supra*, p. 6), and the most damaging general assessment that witness Trombley could make of petitioner's reputation was that "I don't think it is particularly good." (R. 62-63; and see text, *supra*, p. 11).

When it comes right down to it, petitioner was a victim of circumstances in a community of aroused feelings against another. He has been deemed unfit for the bar on the basis of one emotionally charged participant's version of, and that participant's personal conclusion drawn from, a single telephone conversation—the actual language of which can never be determined. After devoting seven years in college and law school toward becoming a lawyer, and indeed after he had twice been found worthy of that profession upon regional investigation, petitioner has now been branded "lacking in good moral char-

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"I had been told that Irene Weirhake had gone loco and all of a sudden decided to accuse Dr. Freeman of rape or sexual immorality, whatever it was . . ." R. 71), whereas he later stated he heard only that Irene was going to testify against Dr. Freeman (*e. g.*, "[I heard t]hat Irene was going to testify against Freeman at his hearing. I didn't hear what about or what the charges were" (R. 89). But certainly this testimonial variance as to what he had heard some five months previously does not warrant any conclusion that petitioner was not telling the truth or is of bad moral character.

acter" because he made a phone call. Such a finding on such flimsy evidence surely constitutes a violation of due process. *Schware* v. *Board of Law Examiners*, 353 U.S. 232; *Konigsberg* v. *State Bar of California*, 353 U.S. 252; cf. *Thompson* v. *City of Louisville*, 362 U.S. 199; *Garner et al.* v. *Louisiana*, Nos. 26-28, this Term. As stated in the first *Konigsberg* case at the conclusion of the Court's opinion:

> "Without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him, it is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law. * * * A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action" *Konigsberg* v. *State Bar of California*, 353 U.S. at 273-274.

CONCLUSION.

For the reasons stated, the judgment below should be reversed, and the case should be remanded to the Missouri Supreme Court with instructions to allow petitioner to take the Missouri bar examination.

Respectfully submitted,

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COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 288.

IN THE MATTER OF THE DETERMINATION OF GOOD MORAL CHARACTER OF MICHAEL ZIPKIN.

On Petition for a Writ of Certiorari to the Supreme Court of Missouri.

BRIEF OF RESPONDENT.

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BRIEF OF RESPONDENT.

OPINIONS BELOW

The order of the court below (R. 118) is unreported. The findings and order of the State Board of Law Examiners (R. 95-104) are unreported.

JURISDICTION

The order of the Supreme Court of Missouri was entered on April 10, 1961. A motion for rehearing was denied on May 8, 1961. The petition for a writ of certiorari was granted on October 9, 1961. The jurisdiction of the Court is invoked under 28 U. S. C. 1257.

QUESTION PRESENTED

Whether the evidence in the record, together with the aid of all reasonable inferences flowing therefrom, rationally supports the finding of the Missouri Board of Law Examiners that petitioner did not satisfy his burden of proving good moral character.

CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment of the United States Constitution provides in pertinent part as follows: "No State shall . . . deprive any person of life, liberty or property without due process of law."

STATEMENT

Background to Hearing by Board of Law Examiners

Petitioner, a resident of Kansas City, Missouri, graduated from the University of Missouri School of Law in June, 1960, at the age of twenty-five (25). He took the Missouri State Bar Examination the same month, but did not pass. While the Board of Law Examiners was still in the process of grading examination papers, a member of the Board received a complaint from a member of the Missouri Bar that petitioner had held himself out as an attorney[1] and had attempted to influence the testimony of a witness at a hearing pertaining to charges of unprofessional conduct by a Missouri psychiatrist, one Dr. Freeman. This was the first complaint the Board had received about petitioner and he had previously been found to be of good moral character by the Missouri Bar Committees for the Sixteenth and Thirty-fourth[2] Circuits (R. 68, 93, 101).

Upon receipt of the complaint, an investigation of the charges against petitioner was made at the request of the Board of Law Examiners. In the meantime, the Board decided to complete the grading of the petitioner's examination paper, along with the papers of all other applicants for admission to practice law in Missouri (R. 93, 94). Petitioner failed the bar examination and was so advised on September 13, 1960 (R. 94, 105). At the same time, petitioner was notified that the Board of Law Examiners

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[1] The Board subsequently found in favor of petitioner on the charge that he held himself out as an attorney (R. 98-99).

[2] The record shows that the Thirty-Fourth Circuit Bar Committee made the finding although, as petitioner suggests (Brief of Petitioner at page 3, note 1), it was probably the Thirteenth Circuit Bar Committee in Columbia, Missouri (Boone County).

had received a report from Fred Hulse, General Chairman of the Missouri Bar Administration, which raised a question as to whether petitioner met the character requirements for application for admission to the Bar (R. 94, 105). Petitioner was further advised that if he desired to take a second bar examination, it would be necessary for the Board to investigate further the matter of petitioner's character and hold a hearing thereon. Petitioner advised the Board that he did intend to take a second bar examination in February, 1961. On October 4, 1960, petitioner was advised that a hearing on the question of whether he met the requirement of good character would be held on October 21, 1960, and that the hearing would be particularly directed to the questions of whether petitioner attempted to influence the testimony of a witness in connection with the Dr. Freeman hearing and whether petitioner had held himself out as a member of the Bar.[3] Petitioner was further advised that the Board had subpoena power and that if he desired to subpoena witnesses, the Board would send him subpoenas. He was also advised that he was entitled to be represented by counsel (R. 95, 108, 109). On October 8, 1960, petitioner wrote the Board and advised that he would be represented by an attorney at the hearing and requested the names of witnesses the Board intended to subpoena with regard to the matters being investigated. On October 12, 1960, the Board advised petitioner of the names of the witnesses to be subpoenaed and of the exact time and place of the hearing (R. 95, 96, 110, 111).

The hearing before the Board was held on October 21, 1960, as scheduled, and petitioner was present in person and represented by an attorney (R. 1, 2, 3, 96). The announced purpose of the meeting was to determine whether

[3] The Board found in favor of petitioner on this charge (R. 98-99).

or not petitioner met the qualifications of good moral character so as to be entitled to take the Missouri bar examination (R. 1).

Testimony at the Hearing

Carl Sapp testified that he had been a practicing attorney in Columbia, Missouri, for approximately twelve (12) years and that he represented Dr. Freeman in the hearing before the State Board of Healing Arts (R. 3). He stated that he had known petitioner for six or seven months and that he had talked to petitioner on two, three or four occasions during that time (R. 4, 5). He further stated that he was not acquainted with petitioner's reputation and that he did not know anything about petitioner's general fitness to be a member of the Bar (R. 5). He stated that he would be willing to sign an affidavit for petitioner stating that from his experience petitioner had conducted himself as a gentleman (R. 5). He further stated that there was considerable community feeling about the Dr. Freeman hearing, but that while the community feeling at first was against Dr. Freeman, the feeling at the time of petitioner's hearing seemed to be backfiring and going the other way (R. 7).

Loren D. Bauriehter testified that he was a resident of Columbia, Missouri, and had known petitioner approximately a year (R. 8). He testified that he had always been on a friendly basis with petitioner and that they were social acquaintances (R. 8). He further testified that petitioner had "acted as a gentleman" and that he "had no reason to see otherwise" than that petitioner was a person of good reputation (R. 13, 18).

Professor Edmond R. Anderson, Jr. testified that he was a professor at the Missouri Law School and that he had known petitioner since the Spring semester of 1958 (R. 21). He testified that he believed that petitioner met the

requirements for admission to the Missouri Bar (R. 26) and that he was "reasonably willing to vouch for Mr. Zipkin's character" (R. 27). He stated, however, that he did "have some, very faint, reservations about Mr. Zipkin, or anyone else, in the present group, who are being admitted to the Bar" (R. 27). He stated that the specific reservation he had in mind with regard to petitioner was that petitioner had told him that while he was working as a Democratic election judge, and people came in and said they wished to vote for Mr. Symington, "it was Mr. Zipkin's disposition, from his own statement to me, to follow what had been told him by others to help them vote the straight Democratic ticket" (R. 27). Professor Anderson stated "that this was a minor thing to worry about, and I don't worry about it" and that he had no other specific reservation about petitioner (R. 27). He also testified that he believed that petitioner was generally fit to be a member of the Bar (R. 28) and that persons he knew in Columbia and Kansas City thought well of petitioner (R. 29).

Dean Joseph Covington testified that he was Dean of the Missouri University Law School and that he had known petitioner since late in 1958 or early in 1959. He stated that he had no personal knowledge of any matter which would prohibit petitioner from practicing as a lawyer but that he was not acquainted with petitioner's reputation (R. 32, 33). He stated that his only acquaintanceship with petitioner was in his official capacity (R. 33) and that once he had a personal conversation with petitioner when he was missing a good many classes and he put him on probation (R. 34). Other than that, he had spoken to him casually in the hallway and one other time when he told the Dean he was going to miss class because his wife had had a baby (R. 34). He further testified that he had received a report from one of the faculty members that petitioner had "intimidated some

witnesses," but that since petitioner had already graduated from the law school, and since the Dean knew that the matter was being investigated by the Missouri Bar, he took no action (R. 37, 38, 39).

Mrs. Ada Margaret Baurichter testified that she was the wife of Loren D. Baurichter and that she had known petitioner for approximately a year and a half (R. 41, 44). She stated that in her opinion his reputation was good and that he was highly spoken of (R. 44).

Michael J. Trombley was the main witness who testified against petitioner. He testified that he was twenty-six (26) years old and practiced law in Columbia, Missouri. He stated that he was graduated from Missouri University Law School in February, 1960, and that he first met petitioner in the Fall of 1957 in their Freshman year together. Trombley and petitioner were social acquaintances and at one time were close friends (R. 55). Trombley testified that he employed a woman by the name of Irene Weirhake as a housekeeper and that Mrs. Weirhake lived in a basement apartment in his home. She had been a patient of Dr. Freeman (R. 55, 56).

Trombley further testified that while Mrs. Weirhake was under treatment by Dr. Freeman, she was informed that she was to appear as a witness against the Doctor at his hearing; that she asked Trombley's advice as to what she should do and that Trombley advised her to tell the truth; that she went to Dr. Freeman and told him that she was going to be called and that she was going to tell the truth; and that Dr. Freeman had advised her that this would not be wise, that something would happen to her whereby she would probably be "kicked out of the Trombley house", that her reputation in the community would be ruined, and that a lot of derogatory things would happen to her (R. 60). Mrs. Weirhake told Trombley and

his wife what the Doctor had said, and shortly thereafter, within a matter of a couple of days, Trombley and his wife received a phone call from petitioner (R. 56, 60).

Trombley further testified that during the phone call, his wife was on one phone in their house, and Trombley was on another and that he recognized the voice on the other end as that of petitioner (R. 56). His version of the telephone conversation was as follows:

> "Sir, Mr. Zipkin was talking to my wife and I picked up the receiver. He mentioned the fact that he was helping Dr. Freeman with his case and that things were looking well, that there had been some new material, or something new had come up but there was a problem in that Irene, I mean Mrs. Weirhake, was in a truth telling mood and that he felt my wife and I should meet with he (sic) and Dr. Freeman to see what could be done about Mrs. Weirhake" (R. 57 and see R. 61).

Trombley further testified that he asked petitioner whether he was trying to intimidate a witness and what "was going on," and petitioner stated: "I think it would be better for everybody all the way around if we met and decided what to do with Mrs. Weirhake" (R. 57). Trombley testified that shortly thereafter he hung up his telephone and that he had no further conversation with petitioner except that once they said hello to each other as petitioner was crossing the street (R. 57).

Trombley further testified that he and his wife at one time were patients of Dr. Freeman (R. 62); that he and Zipkin stopped associating with each other because of the Dr. Freeman hearing (R. 57, 58); that he had no animosity toward petitioner (R. 58); that he did not voluntarily supply the information about the telephone call to the Board of Law Examiners, but that he was specifically asked by a Mr. Alexander, attorney for the Medical Board,

whether "anything was done in relation to" the witnesses Trombley was representing during the hearing, one of which was Mrs. Weirhake; and that it was in response to this inquiry that he told Mr. Alexander of the telephone conversation (R. 63-64). After he told Mr. Alexander about the call, he was contacted by lawyers representing the Missouri Bar Committee, and he also told them about the telephone conversation (R. 64).

Trombley also testified that in his personal opinion, petitioner's reputation was not particularly good and that his opinion was based on his personal experience within the previous few months (R. 62, 63). He testified that he was a character witness for petitioner in his divorce case in 1959, but that his opinion of petitioner had changed since that time (R. 63).

Petitioner took the stand in his own behalf and testified that he was twenty-five (25) years old and graduated from Missouri University Law School in June of 1960. He stated that he was introduced to Dr. Freeman by Mr. and Mrs. Trombley around December of 1958 and that shortly thereafter petitioner became a patient of Dr. Freeman (R. 68).

Petitioner testified that the reason he called the Trombleys was that he thought they should know that Mrs. Weirhake was going to testify since he knew that Mr. and Mrs. Trombley were afraid of their reputation and did not want to get involved with any gossip about Dr. Freeman. His testimony on this point was as follows:

> "Q. Now, referring back to the phone conversation you (fol. 115) had with the Trombleys. I believe you said something to the effect that this Irene woman is going to testify against Dr. Freeman and you folks may be dragged in to it. Now, what was the purpose of your call? What possible good could you have done

in telling them that when they, of course, were as well aware of it as you?

A. Well, in the first place I did not know that they knew about it. I thought it was something on a fresh rumor. Secondly, prior to this time, when Mr. and Mrs. Trombley had ceased their relationship professionally with Dr. Freeman they made the statement to me, 'You know, Mike, Mike Trombley is going to be a lawyer and we want to set ourselves up in this town and become members of the community and we just can't take a, well, we just can't stand, we won't be able to stand the gossip that is going on about him.'

Q. When was that said?

A. This was said in a casual conversation in their home sometime prior—after the split with Freeman but prior to his hearing, I believe. My impression of the Trombleys' split with Dr. Freeman on Mrs. Trombley's part is that she was afraid, she was frightened that being a patient of Dr. Freeman and hearing all the gossip it would reflect on her and her husband.

Q. What did you propose to do with regard to this Irene person?

A. I didn't propose to do anything.

Q. When you called them up?

A. Nothing.

Q. What were you going to suggest?

A. No, sir, I wasn't going to suggest anything. Irene was really their problem because, as I told them over the telephone, 'Irene is going to get herself involved in what looks like a messy situation and I am afraid you guys might get involved in it. I wanted to tell you about it because I am afraid you might get involved in it because you are expatients of Dr. Freeman', and because my understanding was they

were afraid of gossip. They were afraid of rumors because Mike was going to practice here. They were going to set up their home here" (R. 77-78).

Petitioner gave two completely different versions of what he said to the Trombleys over the telephone. He first testified that he called the Trombleys and told them that he had heard that "Mrs. Weirhake was going to accuse Dr. Freeman of rape or sexual immorality" (R. 71). Later in his testimony, however, he stated that he did not tell the Trombleys that he had "heard that she was going to testify that she had been raped by Dr. Freeman" (R. 92; and also R. 87-88, 89-90). His first version was as follows:

> "But, oh well, anyway I called him on the phone because I had heard this Mrs. Weirhake was going to accuse Dr. Freeman of rape or sexual immorality. At that time I knew Dr. Freeman was going to have a hearing but I didn't know who the witnesses were going to be, or anything, and as a—what I consider to be a friendly gesture—I called up the Trombley home. I did it because I had been told that Irene Weirhake had gone loco and all of a sudden decided to accuse Dr. Freeman of rape or sexual immorality, whatever it was, and I called him up to inform them of this. Mrs. Trombley answered the phone. I said, 'This is Mike Zipkin.' She said, 'Yes.' And within a period of, I don't know, two or three minutes, not that long, seconds, I heard the extension or somebody clinking the telephone. **I said, 'And I just heard Irene Weirhake is going to accuse Dr. Freeman of rape and I wanted to tell you about this because if Irene gets into a mess she is just liable to drag you into it.** She lives with you and your being ex-patients of Dr. Freeman, I thought you ought to know about it. If she gets into a messy situation, you and Mike might be dragged into it.' " (R. 71, Emphasis supplied.)

Petitioner's second version of what he said to the Trombleys was as follows:

"Q. All right and you were calling the Trombleys, as I understand it, to inform them that Irene was going to testify to rape and sexual intercourse although I also understood you to say you were confident in your own mind that Irene wouldn't do anything like that?

A. **No. I called the Trombleys simply to tell them I heard Irene was going to testify. I didn't know what to.**

Q. I thought I understood you to say a little while ago you were confident in your own mind Irene wouldn't do (fol. 131) anything like that?

A. I wasn't confident. I found it difficult to believe.

Q. Well, you knew what it was you were going to say, what you had heard she was going to say?

A. **No, I did not hear what Irene was going to say. All I heard was Irene was going to testify against Freeman at his hearing.**

Q. **You mean when you called the Trombleys you didn't talk to them and say to them and you didn't know what it was she was going to testify, that it was sexual?**

A. **No. I called the Trombleys and all I said to them was, 'I heard Irene was going to testify against Dr. Freeman at his hearing.'** " (R. 87-88, Emphasis supplied.)

. . .

"Q. Didn't you just get through telling Mr. Seiler that you didn't know what she was going to testify to before you (fol. 134) called Trombley? Which is right, did you or didn't you?

A. **Here is what is right. I called up the Trombleys and informed them of exactly what I heard.**

Q. **What did you hear?**

A. **That Irene was going to testify against Freeman at his hearing. I didn't hear what about or what the charges were. I had no idea.**

Q. You didn't tell in answer to a question over here (indicating) you did know?

A. I know now what she testified. I read it in the newspaper.

Q. Why did you call Trombleys?

A. I called the Trombleys to inform them that the woman who was living with them was going to testify against Dr. Freeman. I thought they ought to know about it.

Q. Why would that make any difference to the Trombleys unless it was specifically against them?

A. You would have to know the Trombleys. I could tell you. These are as high a society people as you can get and anything like that woman going into a hearing and saying, yes, I live with Trombleys, and yes, I have been raped by a psychiatrist——

Q. **That is the thing you didn't know? This rape by the psychiatrist business.**

A. **That is right I didn't. I didn't know yet.**" (R. 89-90, Emphasis supplied.)

. . . .

"Q. I would like to ask a couple of questions. I understood you—let me get at it this way. I want you to be sure that you understand what your testimony is here as to what you told the Trombleys. I want you to reflect on what you had heard and what you actually told them as to your understanding to what Irene was going to testify to. **Now, reflect on that very carefully and tell us your best recollection of how much detail, if any, you went into with the Trombleys in your description of what you had heard Irene was going to testify to?**

A. **I only told the Trombleys one thing. I only made**

one statement. I said, 'I heard that Irene Weirhake—I heard a rumor that Irene Weirhake was going to testify at this hearing of Dr. Freeman's.'

Q. So that I understand your testimony, it is that you did not tell that you had also heard that she was going to testify that she had been raped by Dr. Freeman or words to that effect?

A. **No, sir.** (R. 92, Emphasis supplied.)[4]

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[4] Petitioner made several other inconsistent statements. Thus, he first testified that he talked to Dr. Freeman about the fact that Mrs. Weirhake was going to testify at Dr. Freeman's hearing *prior* to his call to the Trombleys, but he later testified that he did not talk to Dr. Freeman about this until after he called the Trombleys. Thus, he first testified:

"Q. Well, no. As I understand what you told me a moment ago Dr. Freeman didn't know about the testimony that Irene was supposed to give. That was the information you had. Is that right?

A. Oh, no. I think Dr. Freeman knew and I think several people must have known and I think I heard it and then I heard it from him. Then I heard it from another person that Irene was going to testify.

Q. Was this before you made the call?

A. Yes, before I made it. I had difficulty believing it because of what I knew about Mrs. Weirhake" (R. 81, Emphasis supplied).

Later, petitioner stated that he did not talk to Dr. Freeman before he called the Trombleys. His testimony was as follows:

"Q. I understood you to tell Mr. Croft a moment ago that Dr. Freeman did not tell you about Irene Weirhake's proposed testimony. Am I mistaken on that?

A. No, no. I did not discuss Mrs. Weirhake or Mrs. Weirhake's testimony with Dr. Freeman prior to making the phone call to the Trombleys. That is what I meant.

Q. Didn't you just tell Mr. Oliver that Dr. Freeman told you Irene was going to testify.

A. Yes.

Q. Well, you mean that he didn't tell you that until after you informed him you had called the Trombleys?

A. No.

Q. Straighten me out?

A. I'll try to explain it the best I can. To my best recollection I heard this rumor. I think it was at some kind of gathering, social gathering, that Irene Weirhake was going to accuse Dr. Freeman of rape and sexual immorality at this hear-

Thus, petitioner at one time in his testimony stated that he called the Trombleys and told them that he had "just heard Irene Weirhake is going to accuse Dr. Freeman of rape and I wanted to tell you about this because if Irene gets into a mess, she is just liable to drag you into it" (R. 71); and yet he also testified later that when he called the Trombleys "all I said to them was, 'I heard Irene was going to testify against Dr. Freeman at this hearing'" (R. 88). Petitioner has candidly admitted in his brief that he testified inconsistently as to whether or not he heard that Mrs. Weirhake was going to accuse Dr. Freeman of rape or sexual immorality. See Brief of Petitioner at pages 29-30, note 19.

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ing that he was going to have. I called Trombleys and told them what I had heard because I didn't think they knew and then Dr. Freeman told me that Irene was going to testify against him. I said, 'Are you sure? I heard just a rumor.' He said, 'No, I am sure.'

Q. And at that time you didn't tell the doctor about your call to the Trombleys?

A. No, I didn't.

Q. And their reaction?

A. No" (R. 86-87, Emphasis supplied).

Other inconsistencies in petitioner's testimony were noted by the Board. Petitioner testified that the "end of the friendship (with the Trombleys) was some time in 1959 as best I can tell" (R. 85), and yet he also testified that when he made the phone call to the Trombleys in the Spring of 1960, he was "under the impression that Mr. and Mrs. Trombley were still my friends" (R. 71). Petitioner also stated in his testimony that it was his understanding that the Trombleys were instrumental in getting Mrs. Weirhake to testify and that they already knew about her being involved in the hearing when he called them (R. 72, 78), but he stated at another point in his testimony that he called them because he did not think they knew Mrs. Weirhake was going to testify (R. 87). Although there may conceivably be some way in which to explain away these apparent inconsistencies (See Brief of Petitioner at pages 29-30, note 19), the statements made by petitioner are basically inconsistent, and the Board's finding that they were inconsistent (R. 97) is warranted from the record.

Decision of the Board of Law Examiners and of the Supreme Court of Missouri

On February 13, 1961, the Board of Law Examiners filed its opinion and decision in the Supreme Court of Missouri (R. 93-104). Four members of the Board joined in the opinion and decision and one member dissented. The Board stated that its decision was "based on its observation of the witnesses and a study of the transcript" (R. 96). The Board found as a fact that Trombley's version of the telephone conversation was the correct one and that petitioner did attempt to influence the testimony of Mrs. Weirhake by approaching the Trombleys with the suggestions as testified to by Mr. Trombley. It also found that petitioner did not tell the Board the truth concerning what he said in the telephone conversation and concerning whether or not he knew when he made the phone call that Mrs. Weirhake was going to testify as to sexual relations with Dr. Freeman (R. 98). The Board concluded that "the burden of proof of good moral character has not been satisfied by the applicant" and held that he should not be permitted to take the bar exam (R. 101). It held that the previous findings of good moral character were not binding because the bar committees making these determinations did not have before it the facts which were presented at the hearing before the Board of Law Examiners (R. 101).[5]

One member of the Board dissented. In so doing, however, that member stated that "if the problem was confined merely to a determination of whether Trombley or Zipkin was telling the truth as to what was said in that single telephone conversation, I would not feel bound to dissent from the judgment of my colleagues on that single

[5] The Board found in favor of petitioner on the charge that he held himself out as an attorney (R. 98-99).

question . . . " (R. 102). The dissent was based, rather, on the ground that there was not sufficient evidence to sustain the finding of the Board that petitioner did in fact attempt to influence the testimony of Mrs. Weirhake and that therefore there was no sufficient evidence upon which to base a finding of lack of good moral character (R. 102, 103, 104).

Petitioner filed a motion for judicial review and exceptions to the findings of the Board of Law Examiners, and on April 10, 1961, an order was entered by the Supreme Court of Missouri overruling the exceptions and affirming the findings and order of the Board. The Court held that it had considered the transcript, the record, the file, and also the motion for review, and the Court concluded that the "order is supported by competent and substantial evidence on the whole record" (R. 118). A motion for rehearing was denied on May 8, 1961, and this Court granted the petition for a writ of certiorari on October 9, 1961.

ARGUMENT

I

The Decision Below That Petitioner Did Not Satisfy His Burden of Proof Is Correct and Is Supported by Rational Evidence in the Record

The Missouri Board of Law Examiners is a State administrative tribunal created under Rule 8 of the Rules of the Supreme Court of Missouri. Mo. Rev. Stat., Supreme Court Rule 8.01 (1959). The Board is composed of five persons and is charged with the duties, among others, to conduct the Missouri Bar Examination and "to determine the moral character and general fitness of applicants for registration as law students and of applicants for admission to the Bar." Mo. Rev. Stat., Supreme Court Rules 8.01 and 8.02 (1959). No person is eligible to take the Missouri Bar Examination unless he is of good moral character and the "burden of establishing his eligibility shall rest on the applicant." Mo. Rev. Stat., Supreme Court Rules 8.05 and 8.07 (1959). No applicant to take the bar examination may be examined until his application has been considered and approved by the Board of Law Examiners, and prior to granting approval to take the exam, the Board must investigate the moral character of the applicant. In so doing, it may call upon the Bar Committees of the various judicial circuits in the State of Missouri to make an investigation of an applicant and report their findings to the Board. The Board may make "such further investigations as may be necessary fully to inform itself concerning the moral fitness of the applicant" and "in no event will permission be granted . . . to take the bar examination until the investigation as to moral character has been completed." Mo. Rev. Stat., Supreme Court Rule 8.07 (1959).

The burden of proof of good moral character is upon the applicant and is ordinarily established in the first instance by filing with the Clerk of the Supreme Court of Missouri the affidavits of two practicing attorneys admitted in Missouri who are acquainted with the applicant and who can attest that he has such character and general fitness as justifies his admission to the bar. Mo. Rev. Stat., Supreme Court Rule 8.06 (1959). Thus, the rules for admission to the bar in Missouri are not unlike the rules generally applicable in other states, and the general procedure is aptly stated by this Court in its opinion in the second Konigsberg case, **Konigsberg v. State Bar of California**, 366 U. S. 36, 41-42 (1961):

> "Under such a rule an applicant must initially furnish enough evidence of good character to make a prima facie case. The examining Committee then has the opportunity to rebut that showing with evidence of bad character. Such evidence may result from the Committee's own independent investigation, from an applicant's responses to questions on his application form, or from Committee interrogation of the applicant himself. This interrogation may well be of decisive importance for, as all familiar with bar admission proceedings know, exclusion of unworthy candidates frequently depends upon the thoroughness of the Committee's questioning, revealing as it may infirmities in an otherwise satisfactory showing on his part. This is especially so where a bar committee, as is not infrequently the case, has no means of conducting an independent investigation of its own into an applicant's qualifications. If at the conclusion of the proceedings the evidence of good character and that of bad character are found in even balance, the State may refuse admission to the applicant, just as in an ordinary suit a plaintiff may fail in his case because he has not met his burden of proof."

Here, petitioner initially made a prima facie case of good moral character in connection with his law school registration and in connection with his application to take the bar examination. It was after petitioner took the bar examination and failed that the Board of Law Examiners, prior to granting petitioner permission to take a second examination and pursuant to its power under Supreme Court Rule 8.07 to "make such further investigations as may be necessary fully to inform itself concerning the moral fitness of an applicant," held the hearing which is now under review. At the conclusion of the hearing, the Board held that although petitioner had made a prima facie case of good moral character by reason of the prior determinations made by the Bar Committees (R. 101) and by reason of the evidence presented at the hearing itself with regard to petitioner's general reputation (R. 100), this prima facie showing was more than balanced by the specific evidence at the hearing, particularly the testimony of Trombley and also petitioner's own testimony. The Board therefore concluded, as a jury might determine in an ordinary suit, that petitioner had not sustained his burden of proving good moral character and therefore the Board was unwilling to conclude that petitioner had proved good moral character by a preponderance of the evidence.

The Board specifically held that it based its decision not only on a study of the transcript of the hearing but also on "its observation of the witnesses" (R. 96). Basically, the Board's finding that petitioner's burden of proof had not been satisfied was based on three separate findings: (1) "That applicant Michael Zipkin did attempt to influence the testimony of Irene Weirhake by approaching Mr. and Mrs. Trombley with the suggestions as testified to by Trombley" (R. 98); (2) "That applicant Michael Zipkin was not telling the truth in his testimony before the Board with regard to what he said in the tele-

phone conversation to Mr. and Mrs. Trombley" (R. 98); and (3) "That applicant Michael Zipkin was not telling the truth in his testimony before the Board . . . as to whether or not he knew when he telephoned them (the Trombleys) that Mrs. Weirhake was going to testify as to sexual relations with Freeman" (R. 98). It is respectfully submitted that as to each of these findings the "evidence in the record, . . . with the aid of all reasonable inferences flowing therefrom, casts such doubts upon petitioner's prima-facie case as to justify" the Board's finding that petitioner had not made a satisfactory showing of good moral character. **Konigsberg v. State Bar of California**, 366 U. S. 36, 42 (1961).

(1) The attempt to influence the testimony of Mrs. Weirhake

The Board held that it believed the testimony of Mr. Trombley concerning what petitioner said in the phone conversation (R. 100). Trombley testified that petitioner said as follows:

> "He (petitioner) mentioned the fact that he was helping Dr. Freeman with his case and that things were looking well, that there had been some new material, or something new had come up but there was a problem in that Irene, I mean Mrs. Weirhake, was in a truth telling mood and that he felt my wife and I should meet with he (sic) and Dr. Freeman to see what could be done about Mrs. Weirhake" (R. 57, and see R. 61).

Trombley testified that he asked petitioner whether he was trying to intimidate a witness and what "was going on," and petitioner stated: "I think it would be better for everybody all the way around if we met and decided what to do with Mrs. Weirhake" (R. 57).

The background to this phone call is important. Mrs. Weirhake was employed by the Trombleys as a house-

keeper and lived in a basement apartment in the Trombley home (R. 55, 56). She had been a patient of Dr. Freeman and, in fact, petitioner believed that Mrs. Weirhake was not mentally competent (R. 88). Shortly prior to the telephone call, Mrs. Weirhake had told Dr. Freeman that she was going to testify at his hearing and Dr. Freeman had advised her that that would not be the wise thing to do (R. 60). Then, petitioner called Trombley, whom petitioner apparently still considered his friend (R. 85), and told Trombley that "there was a problem" because Mrs. Weirhake "was in a truth telling mood" and that Trombley should meet with petitioner and Dr. Freeman "to see what could be done about Mrs. Weirhake" (R. 57).

From the foregoing facts, it is submitted that the Board was justified in finding that the purpose of petitioner's phone call was to try to influence the testimony of Mrs. Weirhake through Mr. Trombley. The Board could reasonably have found that petitioner believed the best way to influence the testimony of Mrs. Weirhake was not by approaching Mrs. Weirhake herself but by approaching the person for whom she worked and with whom petitioner still considered himself friendly. Petitioner felt that the Trombleys were afraid of "gossip" (R. 77), and he may have believed that because of this, the best way to influence the testimony of Mrs. Weirhake was by talking to them over the phone in the manner testified to by Trombley (R. 57, 61). It is submitted the Board of Law Examiners was justified in finding that the facts support such a finding or, at the very least, that the findings are not "so totally devoid of evidentiary support as to render them unconstitutional under the Due Process Clause of the Fourteenth Amendment" **Garner et al. v. Louisiana**, 82 Sup. Ct. 248, 251 (1961).

(2) Petitioner did not tell the truth in his testimony before the Board with regard to what he said in the telephone conversation to Mr. and Mrs. Trombley.

The Board also found that petitioner had not satisfied his burden of proving good moral character because he did not tell the Board the truth with regard to what he said in his telephone conversation with the Trombleys (R. 98). It is important to point out that this finding that petitioner did not tell the truth is not based solely on the evidence offered by Trombley concerning what was said during the conversation, but it is also based on the fact that petitioner himself gave two substantially different versions of what he said to the Trombleys. Thus, the finding of the Board that the petitioner did not tell the truth about the conversation is founded upon two independent factors: (a) Trombley's version of the telephone conversation was correct and both of petitioner's versions of the telephone conversation conflicted with Trombley's version; and (b) Petitioner himself gave two completely contradictory versions of the telephone conversation.

Trombley's version of the telephone conversation was that petitioner stated that Mrs. Weirhake was "in a truth telling mood" and Trombley should get together with petitioner and Dr. Freeman "to see what could be done about Mrs. Weirhake" (R. 57, and see R. 61). The Board chose to believe this version of the conversation (R. 100) and it therefore concluded that petitioner did not tell the truth when he stated that the version given by Trombley was incorrect (R. 78).

Moreover, the record demonstrates that petitioner could not possibly have been telling the truth concerning the contents of the phone conversation because he gave two different versions of it, and both could not be truthful. Petitioner's first version was:

> "I said, 'And I just heard Irene Weirhake is going to accuse Dr. Freeman of rape and I wanted to tell

you about this because if Irene gets into a mess she is just liable to drag you into it' " (R. 71).

Petitioner later changed this testimony and stated that he did not mention that Mrs. Weirhake was going to testify to anything of a sexual nature. Thus, he stated:

"Q. You mean when you called the Trombleys you didn't talk to them and say to them and you didn't know what it was she was going to testify, that it was sexual?

A. No. I called the Trombleys and all I said to them was 'I heard Irene was going to testify against Dr. Freeman at his hearing' (R. 87-88).

* * * * * * * *

"Q.. . . Now, reflect on that very carefully and tell us your best recollection of how much detail, if any, you went into with the Trombleys in your description of what you had heard Irene was going to testify to?

A. I only told the Trombleys one thing. I only made one statement. I said, 'I heard that Irene Weirhake—I heard a rumor that Irene Weirhake was going to testify at this hearing of Dr. Freeman's.'

Q. So that I understand your testimony, it is that you did not tell that you had also heard that she was going to testify that she had been raped by Dr. Freeman or words to that effect.

A. No, sir": (R. 92).

This change in testimony by petitioner is significant. He first testified that he told the Trombleys that he had heard that Mrs. Weirhake was "going to accuse Dr. Freeman of rape and I wanted to tell you about this because if Irene gets into a mess she is just liable to drag you into it" (R. 71). After he had so testified, petitioner was closely examined by the Board concerning the reason and purpose for his telephone call. See record at pages 77-78

and 79-83. If petitioner had heard that Mrs. Weirhake was going to testify against his friend, Dr. Freeman, to the effect that he had raped or had immoral relations with her, it might reasonably appear that the purpose of his phone call, in view of Trombley's fear of gossip and his close relationship with Mrs. Weirhake, was to prevent this unfavorable testimony. On the other hand, if petitioner had not heard what Mrs. Weirhake's testimony was going to be, then a phone call to the Trombleys to inform them merely that Mrs. Weirhake was going to testify could not be for the purpose of preventing her testimony since, so far as petitioner knew, Mrs. Weirhake might have testified that she was not raped or did not have sexual relations with Dr. Freeman. Her testimony might therefore have been favorable to Dr. Freeman, and there could be no basis for the Board inferring that the purpose of the call was to prevent her testimony. Petitioner, realizing this as a result of the questions propounded by the Board (R. 77-78, 79-83), changed his testimony to prevent a malevolent purpose for the call from being inferred by the Board and testified that when he called the Trombleys, he did not know about "this rape by the psychiatrist business" (R. 90) and that all he said to the Trombleys was one thing: "I heard that Irene Weirhake—I heard a rumor that Irene Weirhake was going to testify at this hearing of Dr. Freeman" (R. 92).

Thus, it is submitted that the Board was justified in finding that petitioner did not tell the truth about what was said in the telephone conversation, both because petitioner's testimony differed from Trombley's and also because petitioner's testimony was internally inconsistent. Failure to tell the truth by an applicant at a hearing to determine his good moral character is, it is respectfully submitted, sufficient ground in itself upon which to hold that petitioner has not satisfied his burden of proving good moral character.

(3) **Petitioner did not tell the truth in his testimony before the Board as to whether or not he knew when he telephoned the Trombleys that Mrs. Weirhake was going to testify as to sexual relations with Dr. Freeman.**

In addition to the findings previously mentioned, the Board also found that petitioner did not tell the truth in his testimony with regard to whether or not he knew when he telephoned the Trombleys that Mrs. Weirhake was going to testify to sexual relations with Dr. Freeman (R. 98).[8] Since petitioner gave two diametrically opposite versions concerning whether he knew of this prior to the phone call, it is submitted that one of the versions could not be the truth and that therefore this finding by the Board is supported by the evidence. Petitioner in his brief candidly admits a variance in his testimony on this point. See Brief of Petitioner at pages 29-30, note 19.

That petitioner had learned prior to the call to the Trombleys that Mrs. Weirhake's testimony was going to be that she had had sexual relations with Dr. Freeman is shown by petitioner's early testimony at the hearing. Thus, petitioner testified that he told the Trombleys that he had "just heard Irene Weirhake is going to accuse Dr. Freeman of rape" (R. 71). Petitioner also stated that he called Trombleys because he "had heard this Mrs. Weirhake was going to accuse Dr. Freeman of rape or sexual immorality" (R. 71). Yet, later in his testimony, peti-

[8] Naturally, no one "knows" for certain to what a person is going to testify since no one can predict future testimony accurately. A person "knows" of things of this nature only in the sense that he has "learned" of what is supposed to happen. See the second definition of "know" in Webster's New Twentieth Century Dictionary, Unabridged (2d edition, 1960). Clearly it is in this sense that the Board found that petitioner did not tell the Board the truth as to whether or not he knew Mrs. Weirhake was going to testify to rape or immoral relations with Dr. Freeman when he called the Trombleys. The record shows that petitioner did testify inconsistently about what he had heard prior to the call. See text above and Brief of Petitioner, pages 29-30, note 19.

tioner stated that he "did not hear what Irene was going to say" (R. 87), that he didn't know that her testimony was going to be "sexual" (R. 88) and that all he heard was Irene "was going to testify against Freeman at this hearing. I didn't hear what about or what the charges were. I had no idea" (R. 89).

Thus, petitioner first testified that he "heard Irene Weirhake is going to accuse Dr. Freeman of rape" (R. 71) and that he told Trombley of this during the conversation, and yet he later testified that "I did not hear what Irene was going to say" (R. 87) prior to the time of the phone conversation. Petitioner either had heard of the rape charge prior to the time of the telephone call or he did not hear of it. Yet, petitioner testified both that he had heard it (R. 71) and that he had not heard it (R. 87, 88, 89). Since petitioner's testimony was completely contradictory on this point, the Board was justified in finding that he did not tell the Board the truth as to whether or not he had heard when he telephoned the Trombleys that Mrs. Weirhake was going to testify to rape or sexual relations with Dr. Freeman. In fact, as previously pointed out, petitioner admits in his brief that his testimony was inconsistent on this point. See Brief of Petitioner at pages 29-30, note 19. It is therefore respectfully submitted that this finding by the Board is also supported by evidence in the record.

II

The Decision Below Does Not Conflict With the Decisions of This Court in Schware v. Board of Bar Examiners, 353 U. S. 232 (1957), or Konigsberg v. State Bar of California, 353 U. S. 252 (1957), and Is in Accord With the Decisions of This Court

Petitioner urges that the decisions of the Missouri Supreme Court and the Missouri Board of Law Examiners

are contrary to this Court's decisions in **Schware v. Board of Bar Examiners**, 353 U. S. 232 (1957), and **Konigsberg v. State Bar of California**, 353 U. S. 252 (1957). (See brief of petitioner at pages 20-21 and 31.)

An analysis of the facts in those cases shows, however, that the evidence of good moral character submitted by Schware and Konigsberg was overwhelming and the evidence of lack of good moral character was negligible or non-existent; no such showing is presented by the record in this case. Moreover, in those cases there was no question about the truthfulness of the testimony of the applicants before the Boards of Law Examiners, while in the case at hand a serious question of petitioner's truthfulness is presented since the Board specifically held that petitioner did not tell the truth.

In **Schware** the applicant (Rudolph Schware) graduated from law school in 1954 and applied for permission to take the bar examination scheduled for the same month. A hearing was held on the question of his good moral character. At the hearing Schware's law school professors, the members of his law school graduating class, his business associates and the rabbi of the synagogue of which he and his family were members, all gave testimony that he was a good man and a man deeply imbued with a sense of deep responsibility for his family. The evidence showed that he was trustworthy and respectful of the rights and beliefs of others. The record also showed that he was a man of deep religious conviction, read the Bible to an illiterate soldier while in the Army and law to a blind student while at the University of New Mexico law school, and that he supported his wife and two children and paid for a costly professional education by operating a business while studying law. The Court pointed out that "he demonstrated candor by informing the Board of his personal history and by going to the Dean of the law school and disclosing his

past." 353 U. S. 232, 240. The evidence was undisputed that Schware was a man of high ideals and a deep sense of social justice, and not a single witness testified against him.

The only evidence to rebut this overwhelming showing of good moral character was testimony supplied by Schware himself of events which had occurred over 15 years before. From 1934 to 1937 he used certain aliases in order to secure a job in businesses which discriminated against Jews. In 1934 he was arrested while participating in a labor dispute, and he was arrested again in 1940, but the prosecution dropped the charge. Schware also admitted that he had been a member of the Communist Party from 1932 to 1940 when it was a lawful political party with candidates on the ballot in most states and at a time of great depression in this country and when the Communists were fighting a bitter struggle against Fascism. In short, these events occurred long ago and were little, if any, evidence of lack of good moral character. Thus, against an overwhelming showing of good moral character, there was no counterbalancing evidentiary support to justify a finding of lack of good moral character, and this Court therefore held that such a finding deprived Schware of due process of law.

Similarly in the first **Konigsberg** case, 353 U. S. 252, an overwhelming showing of good moral character was made and not rebutted. At Konigsberg's hearing, 42 individuals who had known him at different times for the past 20 years attested to his good moral character, and these testimonials came from a Catholic Priest, a Jewish Rabbi, lawyers, doctors, professors, business men and social workers. Konigsberg was an honor student, taught American History and Literature for a time, served with distinction as an officer in Germany during the Second World War, and many witnesses testified to his belief in democ-

racy, his principled convictions, his honesty and integrity, his conscientiousness and competence in his work and his concern and affection for his wife and children. The only evidence introduced against Konigsberg was that he had attended meetings of a Communist party unit over ten years before (in 1941), that he criticized certain public officials and their policies, and that he refused to answer certain questions about his political associations and beliefs. These factors had little, if any, relevance to his good moral character and did not significantly counterbalance the overwhelming evidence that he was of good moral character.

The case at hand is decidedly different from **Schware** and **Konigsberg**. Only five witnesses, aside from petitioner and Trombley, testified at petitioner's hearing. Of those five, one practicing attorney, Carl Sapp, stated that he was not acquainted with petitioner's reputation, although he felt that in the few times he had seen petitioner he had always conducted himself as a gentleman (R. 4, 5). Another witness, Mr. Baurichter, testified only that petitioner had acted as a gentleman and that he had no reason to believe that petitioner was anything other than a person of good reputation (R. 13, 18). A third witness, Professor Anderson, stated that he was "reasonably" willing to vouch for petitioner's character although he stated that he had some faint reservations about petitioner because of his activities as an election judge (R. 27, 28). The Dean of the law school testified that he was not acquainted with petitioner's reputation, although he had no personal knowledge of any matter which would prohibit petitioner from practicing law. The fifth witness, Mrs. Baurichter, testified that she had known petitioner only for about a year and a half, and she was actually the only person who unequivocally stated that in her opinion petitioner's reputation was good (R. 41, 44). The only other evidence of good moral character was the previous findings

of the Circuit Bar Committees, when petitioner applied for registration as a law student and later for permission to take the bar examination, that petitioner was of good moral character. Not only is there nothing in the record to indicate the basis upon which those decisions were made, but also it is clear that those findings were made prior to the incidents leading up to the hearing by the Board of Law Examiners and prior to petitioner's own testimony at that hearing. Such a showing of good moral character is not comparable to the overwhelming showings of good moral character in the **Konigsberg** and **Schware** cases, in which evidence of good moral character was given by a large number of witnesses from every walk of life.

Moreover, there is a great deal more evidence in this case than in **Schware** and **Konigsberg** which counterbalances and reflects adversely on the showing of good moral character. In both **Schware** and **Konigsberg**, there was no serious question about the truthfulness of the testimony of either of the applicants, and, in fact, in the **Schware** case, this Court pointed out the candor he had demonstrated by disclosing all the events of his past. 353 U. S. 232, 240. In the case at hand, however, the Board of Law Examiners specifically found that petitioner did not tell the truth, a finding which was based not only on the testimony of Trombley, but also on the inconsistent testimony given by petitioner himself on several important aspects of the case. See part I of the argument in this brief, *supra*. Such a lack of truthfulness is supported in the record and is in itself sufficient counterbalancing evidence to warrant a finding that petitioner did not sustain his burden of proving good moral character. Moreover, the evidence against petitioner is not based on facts which occurred ten or fifteen years prior to the hearing, as in the cases of Konigsberg and Schware. Here, the counterbalancing evidence concerned events occurring only a few months prior to the hearing and also events (namely,

petitioner's own testimony) which occurred at the hearing itself. All of these factors are significant and present a basic distinction between the case at hand and the **Konigsberg** and **Schware** cases. It is respectfully submitted that in this case the evidence of good moral character, counterbalanced by the evidence of lack of good moral character, discloses a substantial basis, and at very least a rational basis, for the conclusion of the Board that petitioner did not satisfy his burden of proving good moral character.

Petitioner's reliance on the state court decisions of **Application of Courtney**, 83 Arizona 231, 319 P. 2d 991 (1957), and **In re Schlesinger**, 404 Pa. 584, 172 A. 2d 835 (1961), is misplaced and indicates a possible misunderstanding of the posture of the present case. (See petitioner's brief at page 25, note 15, and 28, note 18.) In the **Application of Courtney**, *supra*, the Arizona Bar Committee refused to certify applicant Courtney's good moral character on the ground that he had attempted to solicit employment for an attorney for whom Courtney was working. The Supreme Court of Arizona reversed this decision after reviewing, *de novo*, the entire record and holding that he had satisfied his burden of proof. In so doing, however, the Supreme Court of Arizona specifically found that the Bar Committee's finding was not "unreasonable or arbitrary." 319 P. 2d 991, 994. The Court held, however, that it had the duty and power to make an independent determination of applicant's good moral character based upon the entire record. Thus the question before the Supreme Court of Arizona was not whether the Bar Committee's action was unreasonable or arbitrary, but, rather, whether, based upon the entire record, the applicant had satisfied his burden of proof. The issue in the case at hand is not whether a *de novo* review of the record shows that petitioner has satisfied his burden of proof; the issue is whether the evidence in the record, together with the aid of all reasonable inferences flowing therefrom, furnishes any rational sup-

port for the conclusion of the board that Petitioner has not satisfied his burden of proving good moral character.

In **Re Schlesinger**, 404 Pa. 584, 172 A. 2d 835 (1961), a practicing lawyer was disbarred on findings of unprofessional conduct made by a Bar Subcommittee. The Supreme Court of Pennsylvania reversed this decision on the grounds that the attorney was denied procedural due process of law, and also on the ground that the findings made by the Subcommittee were not supported by evidence and denied the attorney substantive due process. In so doing, however, the Supreme Court of Pennsylvania pointed out that the burden of proof was on the Subcommittee and that the attorney's license could be taken away only "upon competent and relevant proofs sufficiently credible to support a just order of disbarment." 172 A. 2d 835, 840. In the case at hand the burden of proof is not on the Missouri Bar Committee, but is on the petitioner to prove by a preponderance of the evidence that he is of good moral character.

Petitioner also contends that the decisions of this Court in the second **Konigsberg case**, 366 U. S. 36 (1961), and in **Re Anastaplo**, 366 U. S. 82 (1961), are not in point because they are "obstruction" decisions. (See brief of petitioner at page 21, note 13.) While it is true that those decisions stand for the proposition that it is constitutional for a state not to admit an applicant to the practice of law if he refuses to answer material questions, because such a refusal obstructs the proper functioning of a bar committee, that holding has direct relevance in the case at hand. Here, there is presented not simply a case of a bar applicant refusing to answer material questions; petitioner answered questions, but he did not answer them truthfully. Failure to give truthful answers to questions is more of an obstruction of a Bar Committee's proper functioning than is a simple refusal to answer questions at all. It

should therefore also be constitutional for a state not to admit an applicant if he gives untruthful answers.

Finally, the decision of the **Anastaplo case** is pertinent to the case at hand because it emphasizes the fact that the function of this court "is solely one of constitutional adjudication, not to pass judgment on what has been done as if we were another state court of review, still less to express any view upon the wisdom of the State's action." 366 U. S. 82, 97. The only constitutional question is whether the decision below that petitioner has not satisfied his burden of proof finds rational foundation in the record. It is submitted that the evidence of good moral character, which can be described only as meager, together with counterbalancing evidence, which consists of the testimony of Trombley and the internally inconsistent testimony of petitioner, furnishes a rational basis for the decision of the Board that petitioner did not prove his good moral character by a preponderance of the evidence.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment below should be affirmed.

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